

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 9. GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS

PREAMBLE

1. Sections Affected

R2-9-101
R2-9-101
R2-9-102

Rulemaking Action

Repeal
New Section
Repeal

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 38-871

Implementing statutes: A.R.S. §§ 38-871, 38-872, 38-873, and 38-874

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 421, February 6, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Rob Smook, Rules Administrator

Address: Arizona Department of Administration – Management Services Division
100 N. 15th Avenue, Suite 431
Phoenix, AZ 85007

Telephone: (602) 542-1623

Fax: (602) 542-2010

5. An explanation of the rules, including the agency's reasons for initiating the rules:

The rules pertaining to the expenses of the administration of the state's deferred compensation programs, and the manner in which investment providers will contact state employees and retirees, do not conform to current practice and are not consistent with current rule format and wording. The current rules will be repealed. A new Section reflecting current practice regarding the manner in which investment providers contact state employees will be promulgated.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not utilize a study for evaluating or justifying the rulemaking.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

Notices of Proposed Rulemaking

8. The preliminary summary of the economic, small business, and consumer impact:

Adoption of this rule will have a minor impact on the following groups:

- A. *The Governing Committee.* The Governing Committee will expend time reviewing and approving the annual business plan of the plan administrator. The approval of the plan administrator's marketing plans is currently performed under the rules being repealed, as well as pursuant to A.R.S. § 38-871(C)(4). It does not appear that the new Section will result in additional duties.
- B. *The Plan Administrator.* The deferred compensation plans have approximately \$550 million in assets held in trust for approximately 24,500 current and former employees, and retirees. The duties of the plan administrator include the investment of the participant funds, the monitoring and recommendation of investment choices, the maintenance of all plan records, obtaining annual independent audits of the plans, and the maintenance of a customer service center, an automated voice response telephone system, and an internet site.

The plan administrator is also required to determine how it proposes to educate and market the deferred compensation plans, and to design and furnish all informational and promotional material. The current plan administrator formulates an annual business plan addressing these issues. When plan administration services were recently competitively bid, all bidders indicated they utilize annual business plans for deferred compensation programs of this size.

The plan administrator was asked to isolate the cost of submitting the annual plans to the Governing Committee for review. The plan administrator responded that business plans are prepared regardless of any state requirement, and are submitted to the client entity for review and comment as a routine business practice. Therefore, the additional cost of submitting the material to the Governing Committee for approval pursuant to the new Section was described as "negligible." In addition, the plan administrator reported that the new Section will not require any fee adjustment.

- C. *The participants.* Pursuant to A.R.S. § 38-871(C)(1), no state funds may be used for the administration of the deferred compensation plans. The Governing Committee has no staff or budget; day-to-day plan administration is performed by the third-party plan administrator. The participants in the program are assessed a participation fee to pay the cost of the plan administrator. Therefore, any costs sustained by the plan administrator in obtaining the approval of the Governing Committee are included in the overall fee assessed to the participants. The plan administrator has estimated its costs in obtaining Governing Committee approval as "negligible," and stated that no fee increase will be requested as a result of the new Section. Further, these actions are currently performed under the rules being repealed, as well as under the requirements of A.R.S. § 38-871(C)(4). It does not appear that the new Section will result in any additional cost to participation.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Rob Smook, Rules Administrator

Address: Arizona Department of Administration – Management Services Division
100 N. 15th Avenue, Suite 431
Phoenix, AZ 85007

Telephone: (602) 542-1623

Fax: (602) 542-2010

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Written comments will be received at the address listed in item #9 for 30 days after this Notice of Proposed Rulemaking is published in the *Register*. Oral comments may also be made to the Governing Committee at its monthly meetings during this time period. A public hearing will be scheduled if one is requested. Otherwise, the record will be closed at the end of the 30-day period following publication in the *Register*. Should a request for a public hearing be received, notice of that proceeding will be published in a future edition of the *Register*.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 9. GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY
AND DEFERRED COMPENSATION PLANS

ARTICLE 1. GENERAL PROVISIONS

Section

R2-9-101. ~~Expenses~~ Employee Solicitation for Tax-Deferred Annuities and Deferred Compensation Plans

R2-9-102. ~~Employee and employee participant contact~~ Repealed

ARTICLE 1. GENERAL PROVISIONS

R2-9-101. ~~Expenses~~ Employee Solicitation for Tax-Deferred Annuities and Deferred Compensation Plans

- A.** ~~Companies submitting offers under these rules are reminded the Committee has no funds to pay any costs or expenses they might normally expect to receive from or charge to an offeree. Therefore, all offers submitted to this Committee must contain an acknowledgement of this fact and a disclaimer of liability to this Committee or its members for any expenses or costs which the offeror incurs in connection with an offer or a contract.~~
- B.** ~~No expenses or costs shall be recoverable by an offeror from the state of Arizona, this Committee or its members but it shall not be improper for an offeror to include such anticipated expenses or costs as a part of its offer and which will ultimately be borne by the employee participants in the Plan.~~
- A.** The administrator under contract with the Governing Committee shall draft and present an annual business plan describing its approach to educating and marketing to employees regarding the tax-deferred annuity and deferred compensation plans. The administrator's business plan is subject to the approval of the Governing Committee. The business plan shall include:
1. Enrollment and participation goals for employees;
 2. Performance measures for the administrator;
 3. Plans for achieving the goals and performance measures;
 4. An explanation of the effect of participation on take-home pay and future retirement income; and
 5. Information regarding retirement planning and investment options.
- B.** The administrator shall establish and follow written procedures that provide for the impartial representation of the available investment options and investment products offered under the tax-deferred annuity and deferred compensation plans. The written procedures are subject to the advance written approval of the Governing Committee. The procedures shall:
1. Include directives to the administrator's personnel that information provided to the employees shall be presented in a fair and equal manner, allowing employees to make individual choices based upon their specific investment needs or desires;
 2. Be adequate to ensure that the administrator's personnel will not engage in preferential solicitation of any investment option or investment product; and
 3. Include a means of monitoring at reasonable intervals the adequacy of the procedures and reporting the results of the monitoring to the Governing Committee.
- C.** The failure of the administrator to present the plan required in subsection (A), or the failure of the administrator to establish and follow the procedures required in subsection (B), is a breach of its contract with the Governing Committee.

R2-9-102. ~~Employee and employee participant contact~~ Repealed

- A.** ~~No employee or employee participant will be contacted except as permitted by the Committee.~~
- B.** ~~Contact with an employee or employee participant by a company employee in violation of these rules is cause for barring the offending person from any further participation in such contract work. If it is determined by the Committee that the company employee was acting pursuant to company instructions, a breach of contract may be declared and its contract with the Committee terminated.~~
- C.** ~~Companies under contract with the Committee will be allowed to make such solicitations as are consistent with these rules and the Plan, through prior presentation of their method of so doing to the Plan administrator and approval by the Committee.~~
- ~~1. The Committee shall arrange for the presentation of such solicitations by means of general publication or distribution with paychecks.~~
 - ~~2. This rule shall not apply to routine accounting or reporting required or provided by contract or these rules.~~
 - ~~3. Group meetings may be conducted for all employees at least once a year. Those interested employees will be provided a counseling and enrollment session in order to explain the merits of the State of Arizona Deferred Compensation Plan.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 1. DEPARTMENT OF AGRICULTURE
ADMINISTRATION

PREAMBLE

1. Sections Affected

Rulemaking Action

R3-1-101	Amend
R3-1-102	Amend
R3-1-103	New Section
R3-1-301	Amend
R3-1-302	Amend
R3-1-303	Amend
R3-1-304	Amend
R3-1-305	Repeal
R3-1-306	Amend
R3-1-307	New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 3-107(A)(1) and 41-1003

Implementing statutes: A.R.S. §§ 3-107(A)(1), 41-1023(F), and 41-1033

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 10 A.A.R. 728, February 27, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Sherry D. Blatner, Rules Analyst
Address: Arizona Department of Agriculture
1688 W. Adams, Room 235
Phoenix, AZ 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: sherry.blatner@agric.state.az.us

5. An explanation of the rules, including the agency's reasons for initiating the rules:

This rulemaking updates the Department's rules governing rulemaking practices to those currently prescribed in statute. Procedures that are duplicative of language in statute are removed and additional guidelines are prescribed to enhance clarity.

A new Section is added to advise an applicant for a license that requires a written examination of the applicant's right to request an accommodation to the manner in which an examination is provided. The Department's response to a request for accommodation is provided.

A new Section is added to provide the elements required in a petition to seek Department review of a practice or substantive policy statement that the person is alleging constitutes a rule.

Language usage is conformed to the current rulewriting standards of the Office of the Secretary of State.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

A. The Arizona Department of Agriculture.

The Department will incur modest expenses related to educating staff and the regulated community on the amendments.

B. Political Subdivision.

Other than the Department, no political subdivision is affected by this rulemaking.

C. Businesses Directly Affected by the Rulemaking.

A person seeking a license from the Department that requires a written examination is advised that the Department may set a limit on the time allowed to complete the test. An applicant is advised of the procedure to request an accommodation regarding the manner in which an examination is provided. The Department's review process for response to the request for accommodation is detailed.

A person participating in an oral proceeding regarding a proposed rule is advised in greater detail of the manner in which the presiding officer shall hold the meeting and an additional limitation that may preclude a speaker from reading extensive written material into the record.

A person seeking a review of a practice or substantive policy statement that the person is alleging constitutes a rule is advised of the elements of a petition that may be submitted to the Director in support of the allegation.

Clarification of language in the amended rules should enhance a person's ability to comply with regulations.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Sherry D. Blatner, Rules Analyst
Address: Arizona Department of Agriculture
1688 W. Adams, Room 235
Phoenix, AZ 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: sherry.blatner@agric.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit comments, please contact the rules analyst listed in item #4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except Arizona legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 5:00 p.m. on March 29, 2004.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 1. DEPARTMENT OF AGRICULTURE
ADMINISTRATION**

ARTICLE 1. GENERAL PROVISIONS

Section

- R3-1-101. Definitions
R3-1-102. Computation of Time
R3-1-103. Licensing; Testing

ARTICLE 3. PUBLIC PARTICIPATION IN RULEMAKING

Section

- R3-1-301. Agency Rulemaking Record
R3-1-302. Petition for Adoption, Amendment, or Repeal of a Rule
R3-1-303. Written Public Comment; Proposed Rulemaking
R3-1-304. Oral Proceedings Proceeding; Proposed Rulemaking
R3-1-305. Petition for Delayed Effective Date Repealed
R3-1-306. Written Criticism of Current Rule
R3-1-307. Petition for Review of a Practice or Policy

ARTICLE 1. GENERAL PROVISIONS

R3-1-101. Definitions

In addition to the definitions provided in A.R.S. § 41-1001, the following terms apply to this Chapter, unless the context otherwise requires:

“Administrative Law Judge” means an individual, or the Director of the Department, who sits as an administrative law judge, conducts an administrative hearing in a contested case or an appealable agency action, and makes decisions regarding the contested case or appealable agency action.

“Department” means the Arizona Department of Agriculture.

“Director” means the Director of the Arizona Department of Agriculture.

“License” includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes. A.R.S. § 41-1001.

“Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. A.R.S. § 41-1001.

“Oral proceeding” means a proceeding held during the rulemaking process, as described by A.R.S. § 41-1023.

“Person” means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency. A.R.S. § 41-1001.

“Rule” has the same meaning as in A.R.S. § 41-1001.

R3-1-102. Computation of Time

In computing any period of time allowed by these rules or by an order of the Director, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the period of time allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation. The Department shall compute a period of time for action required in a Department rule or Order, and not otherwise prescribed in statute or rule, as follows:

1. The day of the act, event, or default from which the designated period of time begins to run shall not be included;
2. The last day of the period shall be included unless it is a Saturday, Sunday, or Arizona legal holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Arizona legal holiday;
3. If the period of time allowed is ten days or less, intermediate Saturdays, Sundays, and Arizona legal holidays are not included.

R3-1-103. Licensing; Testing

- A. The Department may require that an applicant pass a written examination as a condition of licensing.
B. The Department may limit the amount of time an applicant is allowed to complete a licensing examination.
C. An applicant seeking an accommodation under the American’s with Disabilities Act to the manner in which an examination is administered shall make the request to the Department at the time an examination is scheduled. The Department may require medical documentation to confirm the need for the requested accommodation.
D. A request for accommodation shall be reviewed and decided on a case by case basis.

ARTICLE 3. PUBLIC PARTICIPATION IN RULEMAKING

R3-1-301. Agency Rulemaking Record

The official rulemaking record is located in the Arizona Department of Agriculture’s Phoenix Office and may be reviewed at any time during regular Department office hours. An official rulemaking record may be reviewed at the Department’s main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. A copy of a record will be provided according to the provisions of A.R.S. § 39-121 et seq.

Notices of Proposed Rulemaking

R3-1-302. Petition for Adoption, Amendment, or Repeal of a Rule

A. ~~Any~~ A person requesting the Department to adopt, amend, or repeal a rule, ~~pursuant to as prescribed in A.R.S. § 41-1033,~~ shall file a petition with the Director ~~as prescribed in this Section.~~ Each A petition shall contain:

1. The name, address, and signature of the person submitting the petition;
2. For the adoption of a new rule, the specific language of the proposed rule;
3. For the amendment of a current rule, the ~~A.A.C. Section number, the title, and the specific language of the current rule together with changes identified by drawing a line through any language to be deleted and an underline for any new underlining proposed language to be added;~~ Section number, the title, and the specific language of the current rule together with changes identified by drawing a line through any language to be deleted and an underline for any new underlining proposed language to be added;
4. For the repeal of a current rule, the ~~A.A.C. Section number and title of the current rule;~~ Section number and title of the current rule;
5. ~~The reason~~ A statement describing why the rule should be adopted, amended, or repealed; and
6. The date the petition is signed.

6.B. ~~Additional supporting~~ A person may submit additional information for the in support of a petition may be provided, including:

- ~~a.1. Any statistical~~ Statistical data or other justification study, with clear references to attached exhibits clearly referencing any attached exhibit;
- ~~b.2. An identification~~ Identification of what persons or segment of the public a person that would be affected and how they the person would be affected; and
- ~~e.3. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or any written comments offered by~~ received from the public.

R3-1-303. Written Public Comment; Proposed Rulemaking

A. Any person may comment upon a rule proposed by the Department by submitting written comments on the proposed rule to the Director.

B. Any document delivered to the Department is considered to have been submitted on the date it is received by the Department. Any document mailed to the Department is considered to have been submitted on the postmarked date.

C. All written comments received by the Department shall be considered pursuant to A.R.S. § 41-1023.

A person shall direct written comment on a proposed rule to the person identified by the Department to accept the comment in a rulemaking notice published in the Arizona Administrative Register.

R3-1-304. Oral Proceedings Proceeding; Proposed Rulemaking

A. Requests for oral proceedings, as prescribed in A.R.S. § 41-1023(B), shall:

1. ~~Be filed with the Director;~~
2. ~~Include the name and address of the person making the request; and~~
3. ~~Refer to the proposed rule and include, if known, the date and issue of the Register in which the notice was published.~~

B. The oral proceeding shall be recorded either by an electronic device or stenographer, and the official record shall include any resulting cassette tapes or transcripts, registers, and written comments received.

C. ~~The A~~ A presiding officer shall perform the following acts on behalf of the Department when conducting an oral proceedings proceeding as prescribed under A.R.S. § 41-1023:

1. Request that attendees each attendee register their names by name and representative capacity, if applicable, with the presiding officer on a form provided by the Department;
2. Request Require that attendees an attendee intending to speak register with the presiding officer by providing their provide the following information of a form obtained from the Department:
 - a. name; Name and representative capacity, if applicable;
 - b. a notation of their position Position with regard to the proposed rule; and
 - c. the approximate Approximate length of time they wish to speak. needed to present comment;
3. Open the ~~record oral proceeding~~ by identifying the rules rule to be considered, the location, date, time, and purpose of the proceeding, and the agenda for the proceeding;
4. Allow a statement by ~~the a Department representatives representative~~ representative to explain the background and general content of the proposed ~~rules: rule;~~ rule;
5. Allow ~~a public oral comment period, pursuant to A.R.S. § 41-1023, limited to a reasonable amount of time for each speaker, as determined by the presiding officer to prevent without permitting undue repetition, and without permitting extensive reading of written comments or exhibits into the record;~~ a public oral comment period, pursuant to A.R.S. § 41-1023, limited to a reasonable amount of time for each speaker, as determined by the presiding officer to prevent without permitting undue repetition, and without permitting extensive reading of written comments or exhibits into the record;
6. Allow the Department to present additional information after public comments are received.
7. Allow a person to respond to the Department's supplemental presentation;
8. Accept written comments and exhibits on behalf of the Department;
- ~~6-9. Make closing remarks which that include the location where the written public comments are to be received as prescribed in R3-1-303(A); received by the Department and the date and time of the close of official rulemaking record shall close.~~

Notices of Proposed Rulemaking

R3-1-305. Petition for Delayed Effective Date Repealed

- ~~A. A person seeking to delay the effective date of the rule pursuant to A.R.S. § 41-1032 shall file a petition with the Director containing:~~
- ~~1. The name, address, and signature of the petitioner;~~
 - ~~2. Identification of the proposed rule by A.A.C. number and title; and~~
 - ~~3. The petitioner's reasons for the proposed delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted, and the reasons why the public interest will not be harmed by the later date.~~
- ~~B. Within 20 days of receipt of the petition, the Department shall render a decision and notify the petitioner.~~

R3-1-306. Written Criticism of Current Rule

- ~~A. At any time, any A person may file a written criticism of a current rule with the Director Department at any time.~~
- ~~B. The A criticism shall clearly identify the rule addressed and specify describe with specificity the problem with person's concern regarding the current rule.~~
- ~~C. Within 20 days the Director The Department shall acknowledge receipt of the a criticism within 20 days and shall retain the criticism in the Department's files for review pursuant to under A.R.S. § 41-1054 41-1056.~~
- ~~D. A criticism is not a petition as prescribed in R3-1-302.~~

R3-1-307. Petition for Review of a Practice or Policy

A person may petition the Director to review a practice or substantive policy statement, as prescribed in A.R.S. § 41-1033, that the petitioner alleges to constitute a rule. The petition shall contain:

1. The name, address, and signature of the petitioner;
2. The representative capacity of the petitioner, if applicable;
3. The practice or substantive policy statement at issue, identified by Department division, number, title, date, or concise description;
4. A statement describing with specificity why the petitioner alleges the practice or substantive policy statement constitutes a rule; and
5. The date the petition is signed.

Notices of Proposed Rulemaking

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1688 W. Adams, Room 235
Phoenix, AZ 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

E-mail: sherry.blatner@agric.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding is not scheduled for this proposed rule. To request an oral proceeding or to submit comments, please contact the rules analyst listed in item #4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except Arizona legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 5:00 p.m. on March 29, 2004.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rule:

None

13. The full text of the rule follows:

TITLE 3. AGRICULTURE

**CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION**

ARTICLE 2. MEAT AND POULTRY INSPECTION

Section
R3-2-201. Definitions

ARTICLE 2. MEAT AND POULTRY INSPECTION

R3-2-201. Definitions

In addition to the definitions provided in A.R.S. §§ 3-101, ~~and 3-2001~~, and 9 CFR 301.2 ~~and 9 CFR 381.1~~, which ~~is~~ are incorporated by reference in ~~R3-2-202(A)~~ R3-2-202, the following ~~shall~~ terms apply to this Article:

1. "Animal" means ~~any~~ a steer, heifer, calf, cow, bull, sheep, goat, swine, horse, ass, mule, burro, ~~and~~ and ~~ratite, or~~ poultry.
2. "Dead animal" means an animal ~~which has that~~ died other than by slaughter in a place where inspection is performed by the Department or by the United States Department of Agriculture.
3. "Inedible meat" means:
 - a. Meat ~~and or~~ meat food ~~products~~ product from animals ~~which have an animal that~~ died by slaughter; ~~or have been~~ was processed in an inspected slaughter ~~houses~~ house, but ~~have not been passed by the~~ which an inspector did ~~not pass as fit~~ not pass as fit for human consumption; or
 - b. Meat condemned by a federal or state ~~inspectors~~ inspector.
4. "Rendering" means the conversion of packinghouse waste; or dead animal carcasses; and parts into industrial ~~fats~~ fat, ~~oils~~ oil, ~~and or~~ or other ~~products~~ inedible product unfit for human consumption.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

PREAMBLE

1. Sections Affected

R9-8-201
R9-8-202
R9-8-202
R9-8-203
R9-8-203
R9-8-204
R9-8-204
R9-8-205
R9-8-205
R9-8-206
R9-8-206
R9-8-207
R9-8-208
R9-8-209

Rulemaking Action

Amend
Repeal
New Section
Repeal
New Section
Repeal
New Section
Repeal
New Section
Repeal
New Section
Repeal
Repeal
Repeal

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(A)(7), and 36-136(F)

Implementing statutes: A.R.S. §§ 36-132(A)(13) and 36-136(H)(6)

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 4670, October 31, 2003

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Will Humble, Bureau Chief

Address: Arizona Department of Health Services
Bureau of Epidemiology and Disease Control
150 N. 18th Avenue, Suite 100
Phoenix, AZ 85007

Telephone: (602) 364-3855

Fax: (602) 364-3266

E-mail: whumble@hs.state.az.us

or

Name: Kathleen Phillips, Rules Administrator

Address: Arizona Department of Health Services
1740 W. Adams, Suite 202
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

5. An explanation of the rules, including the agency's reasons for initiating the rules:

This rulemaking is authorized under A.R.S. § 36-136(H)(6), which requires the Department to promulgate rules for the inspection and certification of bottled drinking water sources, plants, processes, and transportation. In addition, this rulemaking is authorized under A.R.S. §§ 41-1072 through 41-1079, which require the Department to establish licensing time-frames for approvals acted upon by the Department. The Department is amending the rules for bottled water that are in Title 9, Chapter 8, Article 2. R9-8-201 is amended to reflect the changes made to the definitions in the Article. R9-8-202 is amended to explain the general requirements necessary for an approval of a source. R9-8-203

Notices of Proposed Rulemaking

is amended to include the application requirements for an approval of a source. R9-8-204 contains the time-frame requirements as authorized under A.R.S. §§ 41-1072 through 41-1079. R9-8-205 explains the quality testing requirements for bottled water and R9-8-206 contains the labeling requirements for bottled water. The Department is repealing R9-8-207 through R9-8-209. The amended rules conform to current statutory authority, rulemaking format and style requirements, industry practice, and departmental policy.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study for this rulemaking.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The purpose of this rulemaking is to amend the rules for bottled water contained in Title 9, Chapter 8, Article 2, to include quality standards for bottled water that is processed and sold in Arizona. The U.S. Food and Drug Administration (FDA) is responsible for regulating bottled water that is sold into interstate commerce. The FDA has specific regulations for bottled water in Title 21 of the Code of Federal Regulations (21 CFR). The current rules for bottled water contain citations to the CFR that no longer contain the quality standards for bottled water. The proposed rules contain the citations to the CFR that contain the current quality standards for bottled water.

Annual cost/revenues are designated as minimal when less than \$1,000.00, moderate when between \$1,000.00 and \$10,000.00, and substantial when greater than \$10,000.00.

This rulemaking directly impacts any person that processes and sells bottled water, county health departments, and the Department. The cost to a person processing and selling bottled water will depend on the amount of quality testing the person is performing on the bottled water that the person is producing and selling.

The cost to county health departments to inspect the quality of the bottled water is expected to be moderate. In 2002, there were 35 food establishments processing and selling bottled water in Arizona. The statewide goal is to inspect each of the food establishments processing and selling bottled water at least twice a year. The Department and county health departments conducted 79 inspections under Title 9, Chapter 8, Article 1, but were unable to inspect the quality of the bottled water because the current rules contain citations to CFR that no longer contain the quality standards for bottled water. Under the proposed rules, the county health departments will be able to inspect the quality of the bottled water being processed and sold. The cost to the county health departments to inspect for quality purposes includes the additional time needed to review the quality testing records maintained by the plant operator.

The Department will incur minimal costs for promulgating and enforcing the rules. Costs for promulgating the rules include staff time to write, review, and direct the rules through the rulemaking process and to create an approval of source application form to reflect the amended rules. The cost of enforcing the rules includes staff time to track the source approval time-frames and draft written notices.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Will Humble, Bureau Chief
Address: Arizona Department of Health Services
Bureau of Epidemiology and Disease Control
150 N. 18th Avenue, Suite 100
Phoenix, AZ 85007
Telephone: (602) 364-3855
Fax: (602) 364-3266
E-mail: whumble@hs.state.az.us
or
Name: Kathleen Phillips, Rules Administrator
Address: Arizona Department of Health Services
1740 W. Adams, Suite 202
Phoenix, AZ 85007
Telephone: (602) 542-1264
Fax: (602) 364-1150

Notices of Proposed Rulemaking

E-mail: kphilli@hs.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

The Department has scheduled the following oral proceeding:

Date: April 1, 2004

Time: 10:00 a.m.

Location: Arizona Department of Health Services
1740 W. Adams, Room 411
Phoenix, AZ 85007

A person may submit written comments on the proposed rules to either individual listed in items #4 and #9 until the close of record at 5:00 p.m., April 1, 2004.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

The following is incorporated by reference in R9-8-201(4):

21 CFR 165.110(a)(1) (2003), incorporated by reference, on file with the Department and the Office of the Secretary of State, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

The following is incorporated by reference in R9-8-201(13):

21 CFR 165.110(b) (2003), incorporated by reference and on file with the Department and the Office of the Secretary of State, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

The following is incorporated by reference in R9-8-201(17):

21 CFR 165.110(b)(i) (2003), incorporated by reference, on file with the Department and the Office of the Secretary of State, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

The following is incorporated by reference in R9-8-203(B):

21 CFR 165.110(b) (2003), incorporated by reference, on file with the Department and the Office of the Secretary of State, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

The following is incorporated by reference in R9-8-205(A):

21 CFR 129.80(g) (2003), incorporated by reference, on file with the Department and the Office of the Secretary of State, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

The following is incorporate by reference in R9-8-206:

21 CFR 129.80(e) (2003), incorporated by reference, on file with the Department and the Office of the Secretary of State, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION**

ARTICLE 2. BOTTLED WATER

Section

R9-8-201. Definitions

R9-8-202. ~~Water quality and source~~ General requirements

R9-8-203. ~~Processing practices~~ Application for an approval of a source

R9-8-204. ~~Labeling requirements~~ Time-frames

Notices of Proposed Rulemaking

- R9-8-205. ~~Source water sampling~~ Quality testing requirements
R9-8-206. ~~Finished product sampling~~ Labeling requirements
R9-8-207. ~~Transportation vehicles~~ Repealed
R9-8-208. ~~Certification and inspection~~ Repealed
R9-8-209. ~~Public nuisance~~ Repealed

ARTICLE 2. BOTTLED WATER

R9-8-201. Definitions

In this Article, unless the context otherwise requires:

1. ~~“Approved source”, when used in reference to a plant’s water product or water used in the plant’s operations, means the source of the water and the water therefrom, whether it be from a spring, artesian well, drilled well, municipal water supply or any other source that has been inspected by the Arizona Department of Environmental Quality and issued a certificate or notification of approval.~~
1. “Applicant” has the same meaning as in R9-8-101.
2. “Aquifer” means a layer of underground sand, gravel or porous rock where water collects.
- 2-3. ~~“Artesian well water” means natural water from a drilled well tapping that accesses an aquifer in which the with a water level will stand that stands above the bottom of the confining bed of the aquifer, and in which the hydraulic pressure of the water in the aquifer is greater than the force of gravity.~~
3. ~~“Bottled water” means water that is from an approved source and is placed by a food establishment in a sealed container or package for human consumption or other consumer uses and has been produced by any of the processes described in R9-8-203 or which has undergone minimum treatment consisting of filtration (activated carbon and/or particulate) and ozonation or an equivalent process.~~
4. “Bottled water” has the same meaning as in 21 CFR 165.110(a)(1) incorporated by reference and on file with the Department and the Office of the Secretary of State, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.
5. “Bottled water plant” means a food establishment that processes and sells bottled water.
4. ~~“Carbonated water” means bottled water containing carbon dioxide. It is also known as “sparkling water” or “soda water”.~~
5. ~~“Cleaning in place” means the automatic or mechanical cleaning and/or sanitizing of a stationary piece of equipment.~~
6. ~~“CFR” means the Code of Federal Regulations.~~
7. “Confining bed” means a layer of ground that resists water penetration.
- 7-8. ~~“Department” means the Arizona Department of Health Services or a local health department designated by the Director.~~
9. “Drilled well” means a hole bored into the ground to reach underground water.
10. “Food establishment” has the same meaning as in Title 9, Chapter 8, Article 1.
8. ~~“Distilled water” means water which has been produced by a process of distillation and meets the definition of purified water on page 1124 of The United States Pharmacopoeia (21st rev.) dated 1985, Mack Publishing Company, Easton, Pennsylvania 18042, incorporated herein by reference and on file with the Office of the Secretary of State.~~
9. ~~“Drinking water” means water obtained from an approved source for purposes of human consumption.~~
10. ~~“Filler equipment” means a machine used for the purpose of bottling or packaging liquids.~~
11. ~~“Fluoridated water” means water containing naturally occurring or added fluoride of not less than 0.8 milligram per liter fluoride ion and complying with the Food and Drug Administration quality standards set forth in 21 CFR 103.35(d)(2) (4-1-89 Ed.), incorporated herein by reference and on file with the Office of the Secretary of State.~~
12. ~~“Mineral water” means “natural water” that contains not less than 500 parts per million dissolved mineral solids and whose source is approved by the Department of Environmental Quality.~~
13. ~~“Mineralized water” means water which has been modified by mineral addition or deletion and contains not less than 500 parts per million dissolved mineral solids and whose source is approved by the Department of Environmental Quality.~~
14. ~~“Natural water” means spring, artesian well or well water, derived from an underground formation, which is unmodified by blending with water from another source or by mineral addition or deletion but may be treated to reduce the concentration of any substance, except minerals, to meet the safe drinking water standards established by the Arizona Department of Environmental Quality.~~
15. ~~“Naturally carbonated” or “naturally sparkling” means water than contains carbon dioxide and that emerges from the source and is bottled directly with its entrapped gas or from which the gas is mechanically separated from the water and later reintroduced into the water at the time of bottling.~~

Notices of Proposed Rulemaking

16. "Purified water" means water produced by distillation, deionization or reverse osmosis and meets the definition of purified water on page 1124 in The United States Pharmacopoeia (21st rev.) dated 1985, Mack Publishing Company, Easton, Pennsylvania 18042, incorporated herein by reference and on file with the Office of the Secretary of State.
17. "Soda water" means bottled water containing carbon dioxide.
11. "Licensed laboratory" means a laboratory licensed by the Department pursuant to Title 36, Chapter 4.3, Article 1.
12. "Plant operator" means an individual designated by the applicant to operate a specific bottled water plant.
13. "Processes" means the steps taken to make source water meet the quality standards for bottled water in 21 CFR 165.110(b), incorporated by reference and on file with the Department and the Office of the Secretary of State, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.
14. "Public water system" has the same meaning as in R18-4-101.
15. "Source" means an artesian well, drilled well, public water system, or spring.
16. "Source water" means water from an artesian well, drilled well, public water system, or spring.
18. "Sparkling water" means bottled water containing carbon dioxide.
17. "Spring" means has the same meaning as in 21 CFR 165.110(b)(i) incorporated by reference and on file with the Department and the Office of the Secretary of State, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.
19. "Spring water" means water other than artesian that is derived from a natural underground stratum that flows naturally or by external enhancement to the surface through a natural orifice or from a bore hole adjacent to the natural orifice and which meets the requirements of "natural water".
20. "Well water" means water from a hole bored into the ground which taps the water of the aquifer and which meets the requirements of "natural water".

R9-8-202. ~~Water quality and source~~ General requirements

- A.** All bottled water processed in Arizona shall be obtained from a source whose quality is approved by the Director of the Department of Environmental Quality in accordance with the provisions of the A.A.C. Title 18, Chapter 4, Article 2.
- B.** With the exception of mineral water, mineralized water and carbonated water, bottled water processed or sold in Arizona shall meet or exceed the minimum quality standards prescribed by 21 CFR 103.35 (4-1-89 Ed.), incorporated herein by reference and on file with the Office of the Secretary of State.

A food establishment that processes and sells bottled water in Arizona shall use a source approved by the Department.

R9-8-203. ~~Processing practices~~ Application for an approval of a source

- A.** All bottled water processed or sold in Arizona shall be processed and packaged in accordance with the U.S. Food and Drug Administration's Good Manufacturing Practice regulations for bottled water beginning at 21 CFR 129 (4-1-89 Ed.), incorporated herein by reference and on file with the Office of the Secretary of State.
- B.** Bottled water shall not be processed or bottled through a line or other equipment used for any other purpose, except that filler equipment used to bottle liquids intended for human consumption may also be used to bottle water, provided:
 1. Filler and processing equipment, unless specifically designed for cleaning in place, shall be completely disassembled and cleaned after each use and sterilized after assembly.
 2. A separate set of gaskets, O-rings and similar flexible material is used for bottling water.
 3. A physical break exists between all processing lines at the filler inlet.

C. The provisions of R9-8-203(B) shall not apply to soft drink bottling operations processing carbonated water.

A. An applicant shall complete and submit to the Department, an application for an approval of a source on a form provided by the Department that includes:

1. The name, mailing address, and telephone number of the applicant;
2. The name, street address, and telephone number of the bottled water plant;
3. The location of the source used at the bottled water plant;
4. The applicant's signature; and
5. The date the application is signed.

B. With the completed application, an applicant shall include test results from a licensed laboratory that has tested the bottled water according to the quality requirements for bottled water in 21 CFR 165.110(b), incorporated by reference, on file with the Department and the Office of the Secretary of State and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

C. An applicant shall comply with subsections (A) and (B) for each source used at the bottled water plant.

R9-8-204. ~~Labeling requirements~~ Time-frames

- A.** All bottled water processed or sold in Arizona shall conform to the requirements established in A.R.S. § 36-906 and shall be labeled in compliance with one of the following standards:

Notices of Proposed Rulemaking

1. Mineral water shall be labeled "mineral water" or "natural mineral water".
 2. Mineralized water shall be labeled "mineralized water".
 3. Spring water shall be labeled "spring water" or "natural spring water".
 4. Naturally carbonated or naturally sparkling water shall be labeled with the words "naturally carbonated" or "naturally sparkling".
 5. Bottled water which contains carbon dioxide, other than "naturally carbonated or naturally sparkling", shall be labeled with the words "carbonated" or "sparkling" or "soda water".
 6. Well water shall be labeled "well water" or "natural well water".
 7. Artesian well water shall be labeled "Artesian well water", "natural artesian well water" or "natural well water".
 8. Purified water shall be labeled "purified water" and the method of preparation shall be stated on the label except that purified water produced by distillation may be labeled "distilled water".
 9. Drinking water shall be labeled "drinking water".
- B.** Any bottler, distributor, or vendor of bottled water whose corporate name, brand name or trademark contains the words "well," "artesian well," "natural" or any derivation of these words shall label each bottle with the source of the water in typeface at least equal to the size of the typeface of the corporate name or trademark if the actual source of the bottled water is different from the source stated in the corporate name, brand name or trademark.
- C.** The use of words "spring," "spring fresh," "spring brand," "spring type" or other language containing the word "spring" in a corporate name, brand name or trademark, or in describing water, is prohibited unless the water is "spring water" as defined in R9-8-201.
- D.** Supplemental printed information and graphics concerning recognized uses of the water may appear on the label but shall not imply properties of the product or preparation methods which are not accurate.
- A.** The overall time-frame described in A.R.S. § 41-1072 for an application for an approval of a source granted by the Department is 60 days. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive time-frame and the overall time-frame shall not exceed 25% of the overall time-frame.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072 for an application for an approval of a source granted by the Department is 30 days and begins on the date the application is received.
1. The Department shall mail notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
 - a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the application.
 - b. If the Department issues a notice of deficiencies within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice is issued until the date the Department receives the missing information from the applicant.
 - c. If the applicant fails to submit to the Department all the information and documents listed in the notice of deficiencies within 60 days of the date the Department mailed the notice of deficiencies, the Department deems the application for approval of a source withdrawn.
 2. If the Department issues an approval of a source to the applicant during the administrative completeness review time-frame, the Department does not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072 is 30 days and begins on the date the notice of administrative completeness is mailed to the applicant.
1. The Department shall mail an approval of a source or a written notification of denial of the application to the applicant within the substantive review time-frame.
 2. If the Department issues a comprehensive written request or supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date the Department issues the request until the date the Department receives all of the information.
 3. If the Department disapproves an application for an approval of source, the Department shall send the applicant a written notice of disapproval setting forth the reasons for disapproval and all other information required in A.R.S. § 41-1076.
- D.** If a time-frame's last day is on a Saturday, Sunday, or legal holiday, the Department considers the next business day as the time-frame's last day.

R9-8-205. Source water sampling Quality testing requirements

- A.** Samples shall be taken of approved sources of water by plant operators or their agents according to the schedule established in A.A.C. R18-4-223.
- B.** Sampling and analyses shall be by laboratories certified in accordance with A.A.C. R9-14-602 and shall be in addition to any sampling performed by the Department.
- C.** Original laboratory records of bacteriological analyses shall be kept by the bottler for five years. Records of chemical analyses shall be kept ten years.

Notices of Proposed Rulemaking

- A. To maintain approval of its source, a plant operator shall have a licensed laboratory test the quality of the bottled water at the times stated in 21 CFR 129.80(g), incorporated by reference and on file with the Department and the Office of the Secretary of State, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.
- B. A plant operator shall maintain the records of the quality testing of the bottled water on the bottled water plant premises for two years from the date the bottled water was tested and readily available for inspection by the Department.

R9-8-206. ~~Finished product sampling~~ Labeling requirements

- ~~A. To assure that the plant's production of bottled water is in compliance with 21 CFR 103.35 (4-1-89 Ed.), incorporated herein by reference and on file with the Office of the Secretary of State, the plant shall have the following analyses performed by a laboratory certified according to the provisions of A.A.C. R9-14-602:~~
 - ~~1. A representative sample from a batch or segment of a continuous production for each type of bottled water produced by the plant shall be analyzed weekly for microbiological purposes.~~
 - ~~2. A representative sample from a batch or segment of a continuous production for each type of bottled water produced by the plant shall be analyzed annually for chemical, physical and radiological compliance.~~
- ~~B. The representative samples required in subsection (A) above shall be derived from the bottled product.~~
- ~~C. Records of the sampling and analyses shall be maintained on file at the place of operation for a period of two years and shall be made readily available to the Director.~~

In addition to the labeling requirements in Title 9, Chapter 8, Article 1, a plant operator shall label the bottled water it processes and sells according to 21 CFR 129.80(e) incorporated by reference and on file with the Department and the Office of the Secretary of State, and including no future editions or amendments available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

R9-8-207. ~~Transportation vehicles~~ Repealed

- ~~A. Bottled water shall be transported in vehicles used only for the transportation of food and other non-toxic products.~~
- ~~B. All vehicles transporting bottled water shall be clean and shall protect the bottled water from dust, dirt, insects and other vermin.~~

R9-8-208. ~~Certification and inspection~~ Repealed

- ~~A. Upon application by an establishment, pursuant to R9-8-119, a bottled water processing certificate shall be issued prior to the establishment's operation and shall be valid for a period of one year. An establishment shall apply for renewal of its certificate no later than 60 days prior to its expiration.~~
- ~~B. A bottled water processing certificate shall be issued when the bottler has complied with all provisions of this Article and has in its possession a certificate from the Department of Environmental Quality approving the water source.~~
- ~~C. All bottled water processors shall be inspected prior to licensure and once every six months thereafter for compliance with the minimum standards of this Article.~~

R9-8-209. ~~Public nuisance~~ Repealed

- ~~A. Any water supply, label, premises, equipment, process or vehicle which does not comply with the minimum standards of this Article shall be considered a public nuisance.~~
- ~~B. All bottled water public nuisances shall be abated by revocation of the bottling establishment's permit or through the procedures established in A.R.S. § 36-601 or by any other means permissible by law.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

1. Sections Affected

R20-5-201
R20-5-202
R20-5-203
R20-5-204
R20-5-205
R20-5-206
R20-5-209
R20-5-211
R20-5-214
R20-5-216
R20-5-216
R20-5-216
R20-5-217
R20-5-217
R20-5-218
R20-5-219
R20-5-220
R20-5-221
R20-5-222
R20-5-222
R20-5-223
R20-5-224
R20-5-224

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Repeal
Renumber
Amend
Renumber
Amend
Renumber
Renumber
Renumber
Renumber
Amend
Renumber
Renumber
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 23-107(A)(1)

Implementing statutes: A.R.S. §§ 23-961, 11-952.01, and 41-621.01

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 10 A.A.R. 588, February 20, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Terrie S. Rendler, Esq., Counsel, Legal Division
Industrial Commission of Arizona

Address: 800 W. Washington, Suite 303
Phoenix, AZ 85007

Telephone: (602) 542-5781

Fax: (602) 542-6783

5. An explanation of the rules, including the agency's reasons for initiating the rules:

Article 2 originally addressed the processes and procedures for regulating individual self-insured employers as well as workers' compensation pools. Because of confusion and misunderstandings by the regulated community, the Commission determined in 2003 to separate the requirements of Article 2 into two separate Articles. With the proposed amendments eliminating any reference to individual self-insured employers, Article 2 is limited in scope to workers' compensation pools. A new Article 11, which is submitted simultaneously under a separate Notice of Proposed Rulemaking, will contain rules addressing individual self-insured employers. Amended Article 2 contains R20-5-201 through R20-5-224 but now regulates only workers' compensation pools.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rules are necessary to promote statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

The proposed amendments do not diminish a previous grant of authority of a political subdivision of this state.

8. The preliminary summary of the economic, small business, and consumer impact statement:

The amendments to Article 2 are limited to the striking of any reference to individual self-insured employers (which will be subject to a new Article 11). The only substantive change affecting a workers' compensation pool under Article 2 is found in R20-5-224, which addresses the procedure for adding a new member to an existing pool. The economic impact on an existing pool to add a new member will be seen in the submission of financial documentation of the potential new member. The substantive provisions of R20-5-224 require that certain financial documentation be submitted to the Commission to substantiate that the potential new member has the financial ability to effectively participate in the pool. There may be costs such as accounting and copying to comply with R20-5-224, however, securing the financial stability of the Special Fund outweighs the costs for the pool in submitting the required information.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact:

Name: Terrie S. Rendler, Esq., Counsel, Legal Division
Industrial Commission of Arizona

Address: 800 W. Washington, Suite 303
Phoenix, AZ 85007

Telephone: (602) 542-5781

Fax: (602) 542-6783

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Date: April 29, 2004

Time: 1:30 p.m.

Location: Industrial Commission of Arizona
First Floor Auditorium
800 W. Washington
Phoenix, AZ 85007

Nature: Oral and written comments will be accepted on or before the date set forth in this item #10.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

**ARTICLE 2. SELF-INSURANCE REQUIREMENTS FOR ~~INDIVIDUAL EMPLOYERS AND~~
WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. §§ 11-952.01(B) AND 41-621.01**

Section

- R20-5-201. Definition of Self-insurer
- R20-5-202. Self-insurance Application; Requirements
- R20-5-203. Self-insurance Renewal Application; Requirements
- R20-5-204. Denial of Authorization to Self-insure
- R20-5-205. Resolution of Authorization
- R20-5-206. Posting of Guaranty Bond; Effective Date; Execution; Subsidiary Company Guaranty Bond; Parent Company Guaranty; Bond Amounts
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~~R20-5-222. R20-5-221. Audits; Cost of Audit~~
~~R20-5-223. R20-5-222. Time-frames for Processing Initial and Renewal Applications for Authorization to Self-insure~~
~~R20-5-224. R20-5-223. Computation of Time~~
R20-5-224. Adding a New Member to an Existing Pool

**ARTICLE 2. SELF-INSURANCE REQUIREMENTS FOR ~~INDIVIDUAL EMPLOYERS AND~~
WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. §§ 11-952.01(B) AND 41-621.01**

R20-5-201. Definition of Self-insurer

"Self-insurer" or "self-insured" means ~~an individual employer or~~ a workers' compensation pool as defined in A.R.S. §§ 11-952.01(B) or 41-621.01(A) that is authorized by the Commission to self-insure for workers' compensation.

R20-5-202. Self-insurance Application; Requirements

A. All applicants who initially apply for self-insurance on or after the certification of the 1993 rule amendments by the Attorney General and filing of those amendments with the Secretary of State shall:

1. Complete, date, sign, and file with the Commission an application for authority to self-insure on a form that can be obtained from the Commission and contains the following information:
 - a. Applicant identification including names, addresses, corporation, subsidiary, and partnership information;
 - b. Nature of business;
 - c. History of business in Arizona and elsewhere;
 - d. Payroll data;
 - e. Work force data;
 - f. Insurance data;
 - g. Claims history;
 - h. Method proposed to finance self-insurance liability and reserves;
 - i. Program for compliance with occupational safety and health standards, rules, and laws of this state;
 - j. Program to finance medical, surgical, and hospital benefits including information on organization responsible for processing claims;
 - k. Names and addresses of Arizona agents upon whom legal notice of proceedings before the Commission is served;
 - l. Authorization for signatory;
 - m. Authorization by corporate resolution, or board of trustees resolution, if applicable; and
 - n. Statement attesting to the truthfulness of the information in the application.
2. Maintain an office in Arizona. Payroll reports and other materials relating to the calculation of premiums shall be readily available at this office for inspection and audit by the Commission or its authorized representative.
3. In the 1st year of operation, obtain a guaranty bond and specific excess insurance or excess of loss insurance ~~in an amount as provided in R20-5-206(D)(1) to adequately protect against catastrophic losses. Starting with the 2nd year of operation, an individual a self-insurer shall choose 1 of the 2 options select option 2 provided in R20-5-206(D). The on the Option Election Form. The excess insurance policy insurance~~ shall contain:
 - a. A 60-day notice of termination; and
 - b. A provision that insolvency of the self-insurer does not relieve the excess insurer of liability assumed under the contract.

B. ~~An individual applicant for self insurance that is not a member of a workers' compensation pool, in addition to complying with subsection (A) of this rule, shall:~~

- ~~1. Have been engaged in business in Arizona for at least 5 years prior to the date of application.~~
- ~~2. Provide an annual payroll in this state of at least \$2,000,000 (this payroll may include the combined payrolls of all subsidiary companies carried under the self insurance authorization; the requirements of this subsection do not apply to political subdivisions of this state) and meet either of the following thresholds:~~
 - ~~a. Total reported assets of at least \$50,000,000; or~~
 - ~~b. Combination of \$10,000,000 in net worth and a cash flow ratio of .25.~~
- ~~3. Provide the Commission with an internally certified copy of the employer's audited or reviewed financial statements for the most current and prior 2 years. The Commission's review of the applicant's financial statements includes the following:~~
 - ~~a. Calculation of the following ratios:~~

- i. ~~Cash Flow Ratio—Cash flow from operations divided by current liabilities which is an indication of the ability of the applicant to meet current obligations out of cash flow.~~
- ii. ~~Current Ratio—Current assets divided by current liabilities which indicate the applicant's ability to service current obligations.~~
- iii. ~~Debt Status Ratio—Net worth divided by total liabilities which indicate the proportion of funds supplied by the applicant relative to the funds supplied by creditors.~~
- iv. ~~Profitability Ratio—Profit before taxes, divided by total assets, multiplied by 100 which measures the return on assets and the efficiency of assets employed by the firm.~~
- v. ~~Quick Ratio—Cash and equivalents, plus trade receivables, divided by current liabilities which express the degree to which the applicant's liabilities are covered by the most liquid current assets.~~
- vi. ~~Working Capital Ratio—Working capital divided by sales which measures the sufficiency of working capital to support sales.~~
- b. ~~Comparison of the applicant's ratios with the ratios of existing self insurers in the same or a closely related industry.~~
- e. ~~Review of notes to the financial statement.~~
- d. ~~Review of management report of operation and other information published in the annual statement.~~
- 4. ~~Provide the Commission with the names of all other jurisdictions in which it has been granted authority to self-insure and the effective dates of such authorization.~~
- 5. ~~Provide the Commission with the names of all other jurisdictions in which its application to self-insure has been denied or its authority to self-insure has been suspended or revoked, and the dates and reasons for such denials, suspensions, or revocations.~~

C.B. In addition to the requirements of subsection (A), a workers' compensation pool applicant for self-insurance shall:

1. File with the application for self-insurance a completed indemnity agreement on a form that can be obtained from the Commission, signed by a duly authorized agent of the pool jointly and severally binding the pool and each of its members to comply with the provisions of A.R.S. Title 23, Chapter 6 and rules adopted pursuant to Chapter 6. The indemnity agreement shall contain the following information:
 - a. Name of the group, with names of trustees and members;
 - b. Amount of the corporate surety bond;
 - c. Name of the service agent of the group, including a description of the agent's duties and responsibilities; and
 - d. Statement that the group will defend and assume liabilities in the name of and on behalf of any member of the group.
2. Provide a copy of the most recently audited financial report of the pool prepared by a certified public accountant, including a copy of the examination report prepared by the Department of Insurance and that Department's recommendations, if any.
3. Provide the names and addresses of the members of the board of trustees of the pool.
4. Provide the agreement indicating the terms and conditions of coverage within the pool including any exclusions of coverage.
5. ~~An intergovernmental~~ A contract or agreement filed with the Commission pursuant to A.R.S. § 11-952.01(G)(7) (D), or § 41-621.01(A), shall contain the provisions of A.R.S. § 11-952.01(H) (K) or § 41-621.01(I), as applicable.

R20-5-203. Self-insurance Renewal Application; Requirements

A. All individual applicants for self-insurance renewal authority shall:

1. ~~Complete, date, sign, and file with the Commission an Option Election form that can be obtained from the Commission when providing a bond or other security as required by R20-5-206(D) for the payment of workers' compensation liabilities. The Option Election form shall list the following:~~
 - a. ~~Total outstanding workers' compensation accrued liabilities for all previous periods of self-insurance;~~
 - b. ~~Amount of future reserves;~~
 - e. ~~Amount of calculated bond based on the amount of total estimated future liability x 125%.~~~~For those self insurers complying with R20-5-206(D)(1), the self insurer shall additionally provide a certificate of excess insurance.~~
2. ~~Provide a continuation certificate for the guaranty bond or letter of credit signed by an authorized representative of the surety or bank. The amount of the bond, letter of credit, or securities shall equal the amount submitted on the Option Election form.~~
3. ~~Submit a copy of the most recent certified annual financial statement at least 30 days prior to the anniversary date of the authorization to self-insure. A parent company that has executed a guaranty for a subsidiary shall also submit a copy of its most recent certified annual financial statement within the same time period required by this subsection.~~
4. ~~Provide a Guaranty To Satisfy Compensation Claims Under Workers' Compensation Act in Arizona form as provided in R20-5-206(C) completed, signed, and dated by the parent company of a subsidiary self-insurer if the parent company of the self-insurer is different from the last filing approved by the Commission.~~

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~~B.A.~~ All workers' compensation pool applicants for self-insurance renewal authority shall:

- ~~1. Provide information to the Commission as required under subsections (A)(1), (2), and (3):~~
 1. Complete, date, sign, and file with the Commission an Option Election form that can be obtained from the Commission when providing a bond or other security as required by R20-5-206 for the payment of workers' compensation liabilities. The Option Election form shall list the following:
 - a. Total outstanding workers' compensation accrued liabilities for all previous periods of self-insurance;
 - b. Amount of future reserves;
 - c. Amount of calculated bond based on the amount of total estimated future liability x 125%.For those self-insurers complying with option one, the self-insurer shall additionally provide a certificate of excess insurance.
 2. Provide a continuation certificate for the guaranty bond or letter of credit signed by an authorized representative of the surety or bank. The amount of the bond, letter of credit, or securities shall equal the amount submitted on the Option Election form.
 3. Submit a copy of the most recent certified annual financial statement and an actuarial report, at least 30 days prior to the anniversary date of the authorization to self-insure.
 - ~~2-4.~~ Provide an updated indemnity agreement pursuant to R20-5-202(C)(2) for changes occurring since the last filing approved by the Commission.

~~C.B.~~ All applicants for renewal shall continue to maintain an office in Arizona as described in R20-5-202(A)(2).

~~D.C.~~ The Commission's analysis for renewal includes the following:

1. A review of the items required by R20-5-202(A).
2. A review of the claims profile, which includes a review of the preceding year's claims filed, claims denied, and denial rate. Denial rates in excess of 8 12% require additional analysis by the Commission's Claims Division to establish the reasons for the denials.
3. A review of the self-insurer's financial ~~profile which includes a review of the financial data as described in R20-5-202(B)(3)~~ information.

R20-5-204. Denial of Authorization to Self-insure

If the Commission denies an initial or renewal application for authorization to self-insure for failure to comply with A.R.S. § 23-961(A)(2) or for failure to comply with the requirements of R20-5-202 or R20-5-203, the Commission shall issue an Order to the applicant refusing authorization to self-insure. An appeal of such denial may be made pursuant to A.R.S. § 23-945.

R20-5-205. Resolution of Authorization

If the Commission grants authorization to self-insure, a Resolution of Authorization to Self-~~Insure~~ insure will be issued. The issuance of the Resolution shall be conditioned upon the deposit with the Commission, prior to the effective date stated in the Resolution, of the bonds or other securities specified by A.R.S. § 23-961(A)(2) and this Article.

R20-5-206. Posting of Guaranty Bond; Effective Date; Execution; Subsidiary Company Guaranty Bond; Parent Company Guaranty; Bond Amounts

- A. Any guaranty bond filed with the Commission shall bear the same effective date as the effective date of the Resolution of Authorization to Self-Insure and shall be for a minimum of one year, subject to annual renewal.
- B. A guaranty bond shall be made by a company authorized and licensed to transact the business of fidelity and surety insurance in Arizona. The guaranty bond shall be executed by a duly authorized agent of the surety and be countersigned by a licensed resident agent. A bond form can be obtained from the Commission and contains the following information:
 1. Applicant identification;
 2. Amount of the bond;
 3. Conditions of the bond obligations; and
 4. Statement regarding responsibility for fees and costs associated with collection of the bond and responsibility for payment of any award or judgment against the surety.
- ~~C.~~ For the Commission to issue a Resolution of Authorization to Self Insure to a subsidiary company, the parent company shall first execute a guaranty for the subsidiary on a form that can be obtained from the Commission. The parent company shall submit its most recent audited financial statement to the Commission for analysis to determine the ability of the parent company to meet its obligations under the guaranty and under A.R.S. § 23-961(A)(2). The guaranty shall state that the parent company agrees and guarantees on behalf of the subsidiary that any and all liabilities against the subsidiary, under or by virtue of the Workers' Compensation Laws of Arizona, shall be promptly and fully paid, and the subsidiary company has on deposit a guaranty bond or securities. The guaranty for a subsidiary company, and the Resolution of Authorization to Self Insure issued to such subsidiary company, shall be valid and effective only as long as the parent company has on file with the Commission a valid guaranty to satisfy compensation claims of the subsidiary. A parent company is one which owns sufficient stock in the subsidiary company to control the subsidiary and does not mean a company in which all or a majority of the stockholders are the same as in the subsidiary. The guaranty shall be accompanied by a verified certificate as to stock ownership of the subsidiary, a certified copy of the charter or articles of incorporation of the

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parent company and a certified copy of the resolution of the directors of the parent company authorizing a designated officer to execute the guaranty.

~~D.~~ In compliance with this Article and the Workers' Compensation Laws of Arizona, an individual self-insurer that is not a member of a workers' compensation pool shall post either:

1. ~~A minimum \$250,000 guaranty bond and a specific excess reinsurance policy with a self-insured retention of \$250,000 and a policy limit of liability of not less than \$10,000,000.~~
2. ~~A guaranty bond equal to 125% of the total outstanding accrued liability as reflected in the Option Election form from the self-insurer to the Commission or a minimum guaranty bond in the amount of \$100,000, whichever is greater. The total outstanding accrued liabilities shall be determined by certification from the self-insurer for the Commission's approval.~~

~~E.C.~~ In compliance with this Article and the Workers' Compensation Laws of Arizona, a workers' compensation pool shall post a guaranty bond equal to 125% of the total outstanding accrued liability as reflected in the Option Election form from the self-insured pool to the Commission or a minimum guaranty bond in the amount of \$100,000, whichever is greater. The total outstanding accrued liabilities shall be determined by certification from the self-insured pool for the Commission's approval.

R20-5-209. Authorization Limitation

If the Resolution of Authorization to Self-~~Insure~~ insure is validated by a deposit of acceptable securities, or by a guaranty bond, the ~~resolution~~ Resolution shall remain in full force and effect for a period of one year unless revoked by the Commission.

R20-5-211. Revocation of Authorization; Notice of Insolvency; Notice of Change of Ownership

A. The Commission may revoke a ~~resolution of authorization to self-insure~~ Resolution of Authorization to Self-insure for good cause. Good cause includes:

1. The impairment of the solvency of the self-insurer.
2. The failure of the self-insurer to respond within 10 days of a demand by the Commission to substitute a satisfactory guaranty bond or securities when in the Commission's judgment the bond or securities on deposit are unsatisfactory or insufficient in amount or character.
3. The failure of the self-insurer to pay tax assessments levied by the Commission within 30 days of the due dates prescribed by A.R.S. §§ 23-961 and 23-1065.
4. The failure of the self-insurer to promptly provide the Commission within 60 days the reports required by the Commission under this Article concerning the business, operations, employees, wages, injuries, and other subjects under Commission jurisdiction.
5. The failure to comply with state workers' compensation laws.
6. The failure of the self-insurer to pay or comply with any award of the Commission within 30 days after the award becomes final.
7. The willful misstating of any material fact in a payroll report, injury report, or other report or statement made to the Commission.
8. The deliberate refusal of the self-insurer to comply with Commission rules.
9. The failure of the workers' compensation pool to notify the Commission within 30 days before termination or cancellation that a member has been terminated or cancelled.
10. The failure of the workers' compensation pool to notify the Commission within 30 days of receipt of notification that, as a result of the annual audit or examination by the Director of the Department of Insurance, it appears that the assets of the pool are insufficient to enable the pool to discharge its legal liabilities and other obligations and the resulting notification by the Director of the Department of Insurance to the administrator and board of trustees of the workers' compensation pool of the insufficiency and the Director's list of recommendations to abate the deficiency.
11. The failure of the pool to comply with the recommendation of the Director of the Department of Insurance within 60 days of the date of notice as prescribed in A.R.S. §§ 11-952.01(~~E~~ N) and 41-621.01(~~F~~ L).

B. The self-insurer shall notify the Commission within 24 hours of any bankruptcy filing under federal law or insolvency proceeding under any state's laws.

C. The self-insurer shall notify the Commission within 24 hours of any change in the ownership status of the ~~employer~~ Self-insurer.

R20-5-214. Rating Plans Available for Self-insurers

A. Any of the following rating plans are available ~~to self-insured employers~~ for the purpose of calculating the taxes required by A.R.S. §§ 23-961(G) and 23-1065(A).

1. Fixed Premium Plan
2. ~~Ex-medical Plan~~
3. 2 Guaranteed Cost Plan
4. 3 Retrospective Rating Plan

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- B. The provisions of the rating plans apply only to operations and payroll in Arizona, and all such operations in Arizona shall be combined as a single base for the calculation of any premium modifications to all such operations.

~~R20-5-216. Ex-medical Plan: Definition; Formula; Eligibility; Modification~~

- ~~A. An Ex-Medical Plan means a plan for premium calculation which provides for rate revisions based upon the self-insurer operating a medical facility with a program for providing medical, surgical, or hospital services to all of the self-insurer's employees for their benefit and that has complied with the requirements specified in A.R.S. § 23-1070. Neither losses nor incurred loss reserves are used in such plan.~~
- ~~B. The formula for calculation of the Ex-Medical Plan is as follows: $[(\text{Payroll} \times \text{Applicable Rate}) \times (1 - \text{Ex Medical Factor})]$ less Premium Discount.~~
- ~~C. Only those self-insurers whose program for medical, surgical, or hospital services has been authorized by the Commission are eligible to utilize this plan, for premium calculation.~~
- ~~D. To be eligible for this plan the self-insurer's annual net taxable premium must exceed \$100,000.~~

~~R20-5-217. R20-5-216. Guaranteed Cost Plan: Definition; Formula; Eligibility; Cost of Calculation~~

- ~~A. A Guaranteed Cost Plan means a plan providing for the direct relationship, on an annual basis, of the premium for tax purposes and the experience modification developed to reflect the loss payment and incurred loss experience of the self-insured employer pool. Loss data for three complete years must be provided to calculate the experience modification factor. This plan shall be calculated annually and the premium shall not be subject to further adjustment during the subsequent year.~~
- ~~B. The formula for the calculation of the Guaranteed Cost Plan is as follows: $\text{Payroll} \times \text{Applicable Rate} \times \text{Experience Modification Factor}$ Less Premium Discount.~~
- ~~C. Only those self-insurers who satisfy all of the following requirements shall be eligible to use the Guaranteed Cost Plan:~~
- ~~1. The submission of data concerning paid loss determinations and incurred loss reserves for each workers' compensation claimant. The information is used to calculate an experience modification factor for the self-insurer. Three years of loss data shall be formulated to calculate the experience modification factor.~~
 - ~~2. An annual net taxable premium exceeding \$100,000.~~

~~R20-5-218. R20-5-217. Retrospective Rating Plan: Definition; Formula; Eligibility~~

- ~~A. Retrospective rating plan means a plan providing for the relationship between the premium for tax purposes, the experience modification factor developed to reflect the loss payment and incurred loss experience of the self-insured employer, and the actual incurred losses for the tax year. This plan is to be calculated annually and the premiums shall not be subject to further adjustment during the tax year.~~
- ~~B. The formula for calculating the retrospective rating plan is as follows: $[\text{Payroll} \times \text{Applicable Rate} \times \text{Experience Modification Factor} \times \text{Basic Premium Factor} + (\text{losses current year} + \text{adjusted losses previous year}) \times \text{loss conversion factor}] \times \text{Tax Multiplier} = \text{Net Taxable Premium (NTP)}$. The NTP is subject to a maximum and minimum premium level depending on which one of the four rating option plans specified in the rating systems filed by the rating organization used by the State Compensation Fund pursuant to A.R.S. Title 20, Chapter 2, Article 4 is used.~~
- ~~C. Only those self-insurers who satisfy all of the following requirements shall be eligible to use the retrospective rating plan:~~
- ~~1. The submission of data concerning paid loss determinations and incurred loss reserved for each worker's compensation claimant. The information is used to calculate an experience modification factor for the self-insurer. Four years of loss data must be formulated. The oldest three years of data is used to calculate the rate and the most current year's data is used in the actual tax calculation.~~
 - ~~2. An annual net taxable premium exceeding \$100,000.~~

~~R20-5-219. R20-5-218. Payment of Taxes by Self-insurers~~

The tax payments described in A.R.S. §§ 23-961(G) through (J) and 23-1065(A) shall be processed in accordance with the following:

1. All self-insurers shall submit their payroll, loss, medical, and other information to the Commission by January 31 of each year.
2. All self-insurers shall pay their annual taxes on or before March 31 based on premiums calculated for the preceding calendar year. The payment for each tax shall not be less than \$250.00 per year.
3. Those self-insurers who paid \$2,000.00 or more for the administrative fund tax (A.R.S. § 23-961(G)) for the preceding calendar year shall pay a quarterly tax in the following year. One of two methods can be used to calculate the payment. The first method is a quarterly payment of 25% of the tax calculated for the previous year. The second method is based on actual payroll and premiums calculated for each quarter. Those self-insured employers who paid \$2,000.00 or more for the Special Fund tax (A.R.S. § 23-1065(A)) for the preceding calendar year must pay a quarterly tax using the same methods to calculate payment. The quarterly payments are due April 30, July 31, October 31, and January 31 for the periods ending March 31, June 30, September 30, and December 31, respectively.

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4. Upon calculation of the annual taxes, it shall be determined by the Commission if the self-insured employer has overpaid or underpaid its taxes. If the total of the quarterly payments is less than the actual taxes calculated for the year, then the amount representing the difference is due on or before March 31. If the total of the quarterly payments exceeds the amount of the actual taxes calculated for the year, a refund will be paid to the self-insurer.
5. If the self-insurer fails to pay the annual or quarterly taxes when due, a penalty of the greater of \$25.00 or 5% of the tax or payment due plus interest at the rate of 1% per month from the date the tax or payment was due shall be paid by the self-insurer.

~~R20-5-220.~~ R20-5-219. Basis; Definitions

For determining the premium for purposes of R20-5-214, the Commission shall utilize as the basis for classifications, rating procedures, and plans those specified in the rating systems filed by the rating organization used by the State Compensation Fund pursuant to A.R.S. Title 20, Chapter 2, Article 4.

~~R20-5-221.~~ R20-5-220. Book and Record Review by the Commission

All reports, books, and records of the self-insurer relating to classifications, payroll, incurred loss reserves, and procedures for development of statistical information for the development of rating information are subject to review by the Commission and its authorized representatives. If, in the judgment of the Commission, reports, records, and data relating to payroll or claims are not valid or credible, the Commission reserves the right to require correction of procedure and data to better determine the information needed to evaluate the rating programs.

~~R20-5-222.~~ R20-5-221. Audits; Cost of Audit

The Commission may, at any time upon three working days' notice, perform or have performed for its benefit an audit of the payroll, loss payment, and loss reserve records for incurred losses of the self-insurer for the purpose of determining the scope and adequacy of the maintained records. The entire cost of the audit will be borne by the self-insurer.

~~R20-5-223.~~ R20-5-222. Time-frames for Processing Initial and Renewal Applications for Authorization to Self-insure

A. Administrative completeness review.

1. Initial application.
 - a. The Administration Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
 - b. The Administration Division shall inform an applicant by written notice ~~whether if the application is incomplete within the time-frame provided in this subsection by the end of the initial review period.~~ whether if the application is incomplete. If the application is incomplete, the Administration Division shall include in its written notice to the applicant a complete list of the missing information.
 - c. The Administration Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Administration Division that the application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).
2. Renewal application.
 - a. The Administration Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
 - b. The Administration Division shall inform a self-insurer by written notice ~~whether if the application is incomplete within the time-frame provided in subsection (A)(2)(a).~~ whether if the application is incomplete. If the application is incomplete, the Administration Division shall include in its written notice to the self-insurer a complete list of the missing information.
 - c. The Administration Division shall deem the application withdrawn if a self-insurer fails to file a complete application within 45 days of being notified by the Administration Division that the application is incomplete, unless the self-insurer obtains an extension to provide the missing information under subsection (D).

B. Substantive review.

1. Initial application. Within 70 days after the Administration Division determines an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue an order granting or denying authority to self-insure.
2. Renewal application. Within 40 days after the Administration Division determines a renewal application complete, the Commission shall determine whether a renewal application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue an order granting or denying authority to self-insure.

C. Overall review.

1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.
2. Renewal application. The overall review period shall be 60 days, unless extended under A.R.S. § 41-1072 et seq.

- D. If an applicant or self-insurer cannot timely submit to the Administration Division information to complete an initial or renewal application, the applicant or self-insurer may obtain an extension to submit the missing information by filing a written request with the Administration Division no later than 40 days after receipt of the notice from the Administration Division that the initial or renewal application is incomplete. The written request for an extension shall state the reasons the applicant or self-insurer is unable to meet the 45-day deadline. If an extension will enable the applicant or self-insurer to assemble and submit the missing information, the Administration Division shall grant an extension of not more than 30 days and provide written notice of the extension to the applicant or self-insurer.

R20-5-224, R20-5-223, Computation of Time

- A. In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- B. Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

R20-5-224. Adding a New Member to an Existing Pool

To add a new member to an existing pool, the pool must provide the following information to the Division:

1. An Indemnity Agreement form for each new member applicant;
2. A financial statement for the most recent audited fiscal year for each new member applicant;
3. If the experience modification rate ("EMR") for the new member applicant exceeds 1.10, a written statement explaining the reasons for the high EMR must be provided;
4. If the new member applicant has reported OSHA violations, information must be provided explaining the condition causing each violation and corrective actions being taken;
5. If either the "cash ratio" or the "fund equity ratio" are less than .5, a written explanation must be provided as to the conditions that caused the low ratio;
6. If the "all funds balance" is negative, a written explanation of the conditions that caused that circumstance to exist must be provided;
7. The new member must complete the Application Summary for Self-insurance New Member – Existing Pool form;
8. The pool must complete the Legal Profile Summary for the Addition of New Member to Existing Workers' Compensation Pool form;
9. An authorized representative of the pool must sign a statement regarding the nature of the information provided. The authorized representative's signature must be notarized;
10. An authorized representative of the new member applicant must sign a statement regarding the nature of the information provided. The authorized representative's signature must be notarized.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

1. Sections Affected

Rulemaking Action

R20-5-1101	New Section
R20-5-1102	New Section
R20-5-1103	New Section
R20-5-1104	New Section
R20-5-1105	New Section
R20-5-1106	New Section
R20-5-1107	New Section
R20-5-1108	New Section
R20-5-1109	New Section
R20-5-1110	New Section
R20-5-1111	New Section
R20-5-1112	New Section
R20-5-1113	New Section
R20-5-1114	New Section
R20-5-1115	New Section
R20-5-1116	New Section
R20-5-1117	New Section
R20-5-1118	New Section
R20-5-1119	New Section
R20-5-1120	New Section
R20-5-1121	New Section
R20-5-1122	New Section
R20-5-1123	New Section
R20-5-1124	New Section
R20-5-1125	New Section
R20-5-1126	New Section
R20-5-1127	New Section
R20-5-1128	New Section
R20-5-1129	New Section
R20-5-1130	New Section
R20-5-1131	New Section
R20-5-1132	New Section
R20-5-1133	New Section
R20-5-1134	New Section
R20-5-1135	New Section
R20-5-1136	New Section
R20-5-1137	New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 23-107(A)(1)

Implementing statutes: A.R.S. §§ 23-961, 11-952.01, and 41-621.01

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 10 A.A.R. 588, February 20, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Terrie S. Rendler, Esq., Counsel, Legal Division
Industrial Commission of Arizona

Address: 800 W. Washington, Suite 303
Phoenix, AZ 85007

Telephone: (602) 542-5781

Fax: (602) 542-6783

5. An explanation of the rules, including the agency's reason for initiating the rules:

Article 2 originally addressed the processes and procedures for regulating individual self-insured employers as well as workers' compensation pools. Because of confusion and misunderstandings by the regulated community, the Commission determined in 2003 to separate the requirements of Article 2 into two separate Articles. Article 2, which is submitted simultaneously under a separate Notice of Proposed Rulemaking, has been amended and limited in scope to workers' compensation pools. This new Article 11 contains those rules addressing individual self-insured employers.

Several events occurred in recent years that impacted the Commission's self-insurance program and prompted the review of the rules, including:

1. Excess insurance coverage became very expensive and for some self-insured employers, was not even available.
2. The surety bond market became more expensive. In addition, it became more difficult for the Commission to access a surety bond for funds to cover the claims of an insolvent self-insurer or carrier.
3. Two self-insured entities became insolvent and one self-insured is currently in reorganization. In addition, ten insurance carriers became insolvent. These insolvencies have had a significant impact on the financial condition of the Special Fund.
4. As a result of one insolvency, it became obvious that the Commission needed a better mechanism to evaluate loss information in relation to securities posted by self-insurers. One insolvent self-insured understated its losses by reporting losses in the amount of \$113,000, when in reality the actual claims resulted in losses of \$950,000. This discrepancy in reported and actual losses increased potential liability to the Special Fund significantly.

As a result of these events and the perceived need for greater accountability and clarity in the rules, new rules were developed for individual self-insurers. A summary of the new Article 11 follows:

1. The previous Option Election form has been replaced with a Workers' Compensation Liability form, which requires greater disclosure. All self-insurers who must provide securities or surety bonds will now be required to follow one formula, based on 125% of estimated future liability, subject to a \$100,000 minimum-security requirement. The actual formula for calculating the 125% of future liabilities is in the current rules and does not reflect a change. The self-insurer must also provide summary schedules by claim, which will reconcile to, and support, the information provided in the Workers' Compensation Liability form. These changes will allow the Administration Division to verify the correctness of the information provided and validate the amount of securities required.
2. The actual amount of a bond or security to be provided by the self-insured entity will be subject to the analysis and approval of the Commission's staff. In cases involving a requested decrease of 10% or more in the amount of the security, the analysis will be based on a review of claims filed for the preceding three years, a change in payroll, an analysis of the amount owed for unpaid claims, and the financial condition of the self-insurer.
3. A new surety bond form has been developed which requires the bond to be continuous in form rather than for a limited time (usually twelve months) subject to renewal. The bond cannot be issued by a surety company with an affiliate relationship to the self-insurer. In addition, the surety company must have an A.M. Best rating of at least "A."
4. Procedures and forms have been developed that require the self-insurer to notify the Commission on an annual basis whether it is directing medical care for its employees in compliance with A.R.S. § 23-1070.
5. There will be no requirement that a self-insurer carry excess insurance. However, if a self-insurer provides insurance coverage to offset the amount of a bond or security provided, there cannot be an affiliate relationship between the self-insured entity and the excess insurer. "Affiliate relationship" and "control" have now been defined in the definitions Section of Article 11.
6. All non-public self-insurers must provide a bond or securities pursuant to Article 11, however, qualified public entities are exempt from providing such securities under certain conditions, including the maintenance of a fully funded risk management fund.
7. For public entities that are not exempt from posting securities, the Commission will now permit the deposit or posting of "Local Government Investment Pool" (LGIP) funds, which are held as cash by the Arizona State Treasurer. LGIP funds can be substituted for Letters of Credit, Surety Bonds, or Treasury Notes.
8. To eliminate problems concerning responsibility for disclosed information, all self-insurance forms must now be signed by an officer of the self-insured entity.
9. If a self-insurer chooses to use a Service Company to process its claims, the Service Company must be qualified to process claims in Arizona. All self-insurers shall use only one Service Company to process its claims, unless prior permission from the Manager of the Claims Division is secured. If a self-insurer determines to change Service Companies, it must provide written notice to the Claims Division, 30 days prior to any such change.

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10. The new rules tighten the time-frames within which a self-insured entity must post security and provide required financial documentation. The restructuring of mandatory time limits will assure that there are no gaps in coverage, which could result in liability to the Special Fund.
11. For self-insurers who become insolvent but desire to continue self-insurance, a procedure has been established allowing the self-insurer to provide the Commission with a "Letter of Intent" and expanding the Commission's role in the self-insurer's reorganization.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rules are necessary to promote statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

The proposed amendments do not diminish a previous grant of authority of a political subdivision of this state.

8. The preliminary summary of the economic, small business, and consumer impact statement:

Many of the rules in Article 11 are "companion" rules to those in Article 2 and have no substantive differences. However, there are several new rules in this Article that do have substantive impacts on businesses that are self-insured entities. Because of issues and problems with the individual self-insured program in the past, the Commission redeveloped many of the rules addressing individual self-insured employers.

The requirements for disclosure of financial information have been expanded based on the bankruptcy or insolvency of some individual self-insured employers. The additional documentation required may impose an additional economic impact on some individual employers, however, many if not most self-insured employers should already have the type of financial documentation required under Article 11.

In Article 11, the Commission has permitted other types of security to be posted, such as LGIP funds. This will be beneficial to self-insured employers as an option to a letter of credit or bonds. Another revised rule concerns the restricted use of Service Companies. This restriction is new and may or may not impose an economic impact on individual employers.

Recognizing the reality of insolvencies and bankruptcies, the Commission added new provisions requiring notice of an insolvency or bankruptcy proceeding. In the case of a bankruptcy, there are new provisions requiring the self-insured employer to notify the Commission via a Letter of Intent as to the employer's intentions concerning workers' compensation benefits. If a bankruptcy self-insured individual employer elects to reorganize, then the Commission must be included in the employer's Plan of Reorganization and kept informed concerning the bankruptcy case. This may place an economic impact on the employer, but the impact should be marginal inasmuch as the information required by the Commission will already be part of the employer's bankruptcy case.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact:

Name: Terrie S. Rendler, Esq., Counsel, Legal Division
Industrial Commission of Arizona

Address: 800 W. Washington, Suite 303
Phoenix, AZ 85007

Telephone: (602) 542-5781

Fax: (602) 542-6783

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Date: April 29, 2004

Time: 1:30 p.m.

Location: Industrial Commission of Arizona
First Floor Auditorium
800 W. Washington
Phoenix, AZ 85007

Nature: Oral and written comments will be accepted on or before the date set forth in this item #10.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 11. SELF-INSURANCE REQUIREMENTS FOR INDIVIDUAL EMPLOYERS

Section

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<u>R20-5-1102.</u>	<u>Computation of Time</u>
<u>R20-5-1103.</u>	<u>Forms Prescribed by the Commission</u>
<u>R20-5-1104.</u>	<u>Requirement for Commission Approval to Act as Self-insurer</u>
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<u>R20-5-1106.</u>	<u>Time-frames for Processing Initial Applications and Requests for Renewal for Authorization to Self-insure</u>
<u>R20-5-1107.</u>	<u>Requirements for Initial Application under A.R.S. § 23-961</u>
<u>R20-5-1108.</u>	<u>Requirements for Self-insurance Renewal</u>
<u>R20-5-1109.</u>	<u>Security Deposit; Excess Insurance Policy</u>
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<u>R20-5-1111.</u>	<u>Posting of Other Bonds or Treasury Notes of the United States in Lieu of Guaranty Bond; Registration; Deposit</u>
<u>R20-5-1112.</u>	<u>Letter of Credit or Local Government Investment Pool Funds (LGIP)</u>
<u>R20-5-1113.</u>	<u>Substitution of Securities</u>
<u>R20-5-1114.</u>	<u>Exemption from Requirement to Post Security</u>
<u>R20-5-1115.</u>	<u>Rating Plans Available for a Self-insurer</u>
<u>R20-5-1116.</u>	<u>Fixed Premium Plan; Formula; Eligibility; Information Required to be Submitted with Plan</u>
<u>R20-5-1117.</u>	<u>Ex-medical Plan; Formula; Eligibility; Information Required to be Submitted with Plan</u>
<u>R20-5-1118.</u>	<u>Guaranteed Cost Plan; Formula; Eligibility; Information Required to be Submitted with Plan</u>
<u>R20-5-1119.</u>	<u>Retrospective Rating Plan; Formula; Eligibility; Information Required to be Submitted with Plan</u>
<u>R20-5-1120.</u>	<u>Completion of Reports in Support of Tax Rating Plan; Calculation and Payment of Taxes Owed by Self-insurer under A.R.S. §§ 23-961 and 23-1065</u>
<u>R20-5-1121.</u>	<u>Basis for Definitions, Classifications, Rating Procedures, and Plans</u>
<u>R20-5-1122.</u>	<u>Report, Book, Record, and Data Review by the Commission</u>
<u>R20-5-1123.</u>	<u>Audit and the Cost of Audit</u>
<u>R20-5-1124.</u>	<u>Requirement to Provide Information to the Commission</u>
<u>R20-5-1125.</u>	<u>Service Companies; Qualifications; Contracts; Transfer of Claims</u>
<u>R20-5-1126.</u>	<u>Notice to Commission of Location of Self-insurer's Claims Files</u>
<u>R20-5-1127.</u>	<u>Processing of Workers' Compensation Claims by a Self-insured Employer</u>
<u>R20-5-1128.</u>	<u>Review of Initial Application and Request for Renewal to Self-insure</u>
<u>R20-5-1129.</u>	<u>Decision by the Commission on Initial Application or Request for Renewal of Authorization to Self-insure</u>
<u>R20-5-1130.</u>	<u>Right to Request a Hearing</u>
<u>R20-5-1131.</u>	<u>Hearing Rights and Procedures</u>
<u>R20-5-1132.</u>	<u>Decision Upon Hearing by the Commission</u>
<u>R20-5-1133.</u>	<u>Request for Review</u>
<u>R20-5-1134.</u>	<u>Revocation of Authorization to Self-insure</u>
<u>R20-5-1135.</u>	<u>Notice of Bankruptcy, Change in Ownership Status, or Change in Business Address</u>
<u>R20-5-1136.</u>	<u>Plan of Action for Retaining Self-Insurance Authority in the Event of Insolvency or Bankruptcy</u>
<u>R20-5-1137.</u>	<u>Notice of Termination of Authorization to Self-insure by Self-insurer</u>

ARTICLE 11. SELF-INSURANCE REQUIREMENTS FOR INDIVIDUAL EMPLOYERS

R20-5-1101. Definitions

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

“Act” means the Arizona Workers’ Compensation Act found at A.R.S. § 23-901 et seq.

“Affiliate” or “affiliate relationship” means a person or entity that has the power to control, directly or indirectly, through one or more intermediaries, another person or entity.

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“Anniversary date” means the annual date each year beginning one year from the initial effective date for the Authorization to Self-insure.

“Applicant” means an individual employer filing an initial application for authority to self-insure under A.R.S. § 23-961.

“Authorized signature” is defined as the signature of an officer of the self-insurer.

“Cash flow ratio” means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds provided by operations of a business by current liabilities.

“Chief counsel” means the chief counsel for the Industrial Commission of Arizona.

“Claim” means a worker’s compensation claim.

“Claims Division,” means the Claims Division of the Industrial Commission of Arizona.

“Classification code” means a number assigned by an approved rating organization that classifies employees by type of job performed.

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of, the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

“Current ratio” means a numerical relationship that reflects an ability to pay current obligations and is calculated by dividing current assets by current liabilities.

“Debt status ratio” means a numerical relationship that reflects the proportion of funds supplied internally relative to the funds contributed by creditors and is calculated by dividing net worth by total liabilities.

“Division” means the Accounting Division of the Industrial Commission of Arizona.

“Ex-medical plan” means a method of determining the premium upon which taxes are calculated that provides for rate revisions based upon the self-insurer operating a medical facility with a program for providing medical, surgical, or hospital services to a majority of the self-insurer’s employees and that complies with the requirements of A.R.S. § 23-1070. Neither losses nor incurred loss reserves are used in this plan.

“Excess insurance carrier” means an insurance carrier authorized to issue policies of excess insurance coverage to a self-insured employer.

“Experience modification rate” means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and which includes three years of loss information.

“Fixed premium plan” means a method of determining the premium upon which taxes are calculated in which neither losses nor incurred loss reserves are used for calculation. The only discount is for premium size.

“Fully funded risk management fund” means a fund that maintains a positive equity balance that is sufficient to cover all of the fund’s actuarial losses.

“Guaranteed cost plan” means a method of determining the premium upon which taxes are calculated that provides for a direct relationship, on an annual basis, of the premium for tax purposes and the experience modification rate developed to reflect the loss payment and incurred loss experience of the self-insured employer.

“Individual employer” means an employer under the Act that is applying for authority to self-insure, or is approved to self-insure, that is not an entity described in A.R.S. § 23-961.01; § 11-952.01; or § 41-621.01.

“Parent company” is one that owns sufficient stock in a subsidiary company to have voting control of the subsidiary company, as “control” is defined in this Article.

“Profitability ratio” means a numerical relationship that represents the return on assets and the efficiency of assets and is calculated by dividing profit before taxes by total assets, multiplied by 100 expressed as a percentage.

“Public entity” means an individual employer that is a state, county, municipality, school district or any other entity with taxing authority.

“Quick ratio” means a numerical relationship that represents the degree to which liabilities are covered by the most liquid current assets and is calculated by dividing cash and equivalents, plus receivables, by current liabilities.

“Rating organization,” means an entity that meets the requirements of A.R.S. § 20-363, and is approved by the Arizona Department of Insurance to establish rates, codes, and formulas used to calculate worker compensation premiums.

“Resolution of Authorization” means a document issued by the Commission that grants authority to self-insure for purposes of workers’ compensation.

“Retrospective rating plan” means a method of determining the premium upon which taxes are calculated that provides for the relationship between the premium for tax purposes, the experience modification rate developed to reflect the loss payment and incurred loss experience of the self-insured employer, and the actual incurred losses for the tax year.

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“Securities” or “security” means a guaranty bond, a bond of the United States or its agencies, United States’ Treasury Notes, a letter of credit, or Local Government Investment Pool (LGIP) funds, or appropriate documents renewing or continuing any of these.

“Self-insurer” or “self-insured” means an individual employer that has been authorized by the Commission to self-insure for workers’ compensation insurance under A.R.S. § 23-961.

“Working capital ratio” means a numerical relationship that measures the sufficiency of working capital to support sales and is calculated by dividing working capital by sales. Working capital is found by subtracting current liabilities from current assets.

R20-5-1102. Computation of Time

- A.** In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- B.** Except as otherwise provided by law, the Division may extend time limits prescribed by this Article for good cause. Any request for an extension of a time limit shall be submitted to the Division in writing at least ten (10) days prior to the expiration of the time limit for which an extension is sought.

R20-5-1103. Forms Prescribed by the Commission

The following forms are available upon request from the Division or from the Commission’s internet site at www.ica.state.az.us, and are required for use:

- A.** Initial Application for Authority to Self-insure form shall contain:
1. Legal name of the applicant and requested effective date for authority to self-insure;
 2. Mailing address and telephone number of applicant’s principal Arizona office and home office;
 3. Name of state under which applicant was incorporated, if applicant is a corporation;
 4. Name of parent company, if applicant is a subsidiary;
 5. Name, address, and status of partners (general, special and limited), if applicant is a partnership;
 6. Length of time in business in Arizona and elsewhere, if applicable;
 7. Nature or type of business in Arizona;
 8. Arizona payroll data;
 9. Current workers’ compensation insurance data, including current expiration date;
 10. Statement of reasons for rejection or cancellation if an application for worker’s compensation insurance submitted by applicant has ever been rejected or a policy of workers’ compensation insurance held by the applicant has ever been cancelled;
 11. Listing of states where self-insurance was denied and where the applicant is currently self-insured;
 12. Arizona claims history and data for past three years;
 13. Arizona loss history and experience modification rates for past three years;
 14. Name of excess insurance carrier;
 15. Name, address, and telephone number of third party administrator or individual responsible for processing Arizona workers’ compensation claims;
 16. Names and addresses of Arizona agents upon whom legal notice may be served;
 17. Selection of tax plan;
 18. Name, address, telephone and facsimile numbers, and e-mail address of person responsible for completing the tax information;
 19. Name, address and telephone number of claims office where Arizona workers’ compensation claims will be processed;
 20. Name, address, telephone and facsimile numbers, and e-mail address of the primary and secondary points of contact for the application and self-insurance process;
 21. Statement that all information and assertions contained in the application and the documents accompanying the application are factually correct and true;
 22. Authorized signature and title of person signing initial application.
 23. Date of execution of initial application; and
 24. Listing of required attachments.
- B.** Workers’ Compensation Liability form shall contain:
1. Name of self-insurer;
 2. Selection and calculation of required securities and excess insurance, which includes reporting of the following:

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- a. For all claims reported in the current calendar year, the number of open claims; total incurred liability, both medical and compensation, less the amount paid on these claims to equal the remaining liability or amount owing on these claims;
- b. For all open claims incurred in prior years and remaining open in the current year, the number of open claims, the total incurred liability, both medical and compensation, less the amount paid on these claims to equal the remaining liability or amount owing on these claims;
- c. The total remaining liability on all open claims less any reimbursement for excess insurance ceded to equal the net remaining liability owing on all claims;
- d. The amount calculated in subsection (B)(2)(c) multiplied by 125%.
3. Name of excess insurance carrier that provides reimbursement to self-insurer;
4. A statement by the Chief Financial Officer or Chief Executive Officer attesting to the truthfulness of the information contained in the Workers' Compensation Liability Form;
5. Authorized signature and title of person signing the form; and
6. Date of execution.
- C.** Self-insurance Workers' Compensation Guaranty Bond form shall contain:
 1. Name of applicant or self-insurer;
 2. Name of the surety insurance company;
 3. Description of the bond, bond number, amount, and conditions of obligation;
 4. Statement regarding the responsibility for fees and costs associated with the collection of the bond and the responsibility for payment of any award or judgment against the surety;
 5. Authorized signatures and titles of self-insurer, surety, and agent or attorney in fact, and a notarized power of attorney; and
 6. Date of execution.
- D.** Guaranty to Satisfy Compensation Claims form shall contain:
 1. Name and state of incorporation of parent company;
 2. Name of subsidiary (applicant or self-insurer) to be included in the guaranty;
 3. Statement (guaranty) that the parent company will assume the workers' compensation liabilities of the subsidiary if the subsidiary is unable to honor these liabilities, which guarantee is for the benefit of and may be enforced by any and all employees of subsidiary;
 4. Authorized signature and title of person signing the form;
 5. Corporate seal; and
 6. Date of execution.
- E.** Self-insured Payroll Report form shall contain:
 1. Name of self-insured;
 2. Tax plan selection;
 3. Period covered by report;
 4. Payroll description (classification codes, methods and types of pay);
 5. Amount paid for period covered by the report;
 6. Statement that all information and assertions contained in the report are factually correct and true;
 7. Authorized signature, title, and telephone number of person signing self-insured payroll report; and
 8. Date of execution.
- F.** Self-insured Medical Report form shall contain:
 1. Name of self-insured;
 2. Period covered by report;
 3. Amount paid relating to treatment of industrial injuries, including remuneration of medical personnel employed by the self-insurer and medical providers providing outside services;
 4. Compensation paid to worker's compensation claimants;
 5. Insurance premiums paid;
 6. Total expenditures for workers' compensation and occupational disease claims;
 7. Statement that all information and assertions contained in the report are factually correct and true;
 8. Authorized signature, telephone number, and title of person signing self-insured medical report; and
 9. Date of execution.
- G.** Self-insured Hospital Report form shall contain:
 1. Name of self-insurer;
 2. Period covered by report;
 3. Amount paid for operational expenses, including payroll, employee benefits, surgeon and physician fees, pharmacy costs, miscellaneous supplies and services, utilities, depreciation, licenses, and taxes;
 4. Amount received from revenues including charges for inpatient and outpatient care, miscellaneous revenue, employee paid premiums, and employer paid premiums;

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5. Reconciliation of cash account, including cash balance, total cash available, investments, operating expenses, disbursements, and net cash balance;
6. Statement that all information and assertions contained in the report are factually correct and true;
7. Authorized signature, title, and telephone number of person signing report; and
8. Date of execution.

H. Self-insured Injury Report form shall contain:

1. Name of self-insurer;
2. Period covered by report;
3. Description of individual claims for the current year and three preceding years requiring payment in excess of \$5,000 including names of claimant, dates of injury, nature of injuries, accumulated amounts paid and outstanding for each claim in excess of \$5,000;
4. Description of aggregate amounts paid and outstanding for individual claims requiring payment of \$5,000 or less for the current year and three preceding years;
5. Statement that all information and assertions contained in the report are factually correct and true;
6. Authorized signature, title, and telephone number of person signing report; and
7. Date of execution.

I. Quarterly Tax Payment form shall contain:

1. Name and address of the self-insurer;
2. Designation of the applicable quarter;
3. Amount of annual tax paid in the previous calendar year; amount of the quarterly tax paid adjusted for change in the tax rate;
4. Statement that all information and assertions contained in the form are factually correct and true;
5. Authorized signature, title, and telephone number of person signing the quarterly tax payment form; and
6. Date of execution.

J. Notice of Self-Termination of Authority to Self-insure by Self-insurer form:

1. Name, address, and telephone number of self-insurer and all Arizona subsidiaries covered under the authority to self-insure, including if applicable:
 - a. Names and addresses of all Arizona operations or locations covered by self-insurance authority;
 - b. Names and addresses of all partners, if self-insurer is a partnership; and
 - c. Current and former names of self-insurer if the self-insurer has undergone a name change since the most recent effective date of the authority to self-insure.
2. Effective date of termination of authority to self-insure;
3. Name and address of workers' compensation insurance carrier providing coverage after the effective date of termination;
4. Effective date of workers' compensation coverage;
5. Statement that all information and assertions contained in the form are factually correct and true;
6. Authorized signature, title, and telephone number of person signing the form; and
7. Date of execution.

K. Self-Provider of Medical Benefits form shall contain:

1. Indication of whether the self-insurer is, or is not, directing medical care for all of its employees;
2. If the self-insurer is directing medical care for its employees, a copy of all contracts between the employer and the medical providers should be submitted. Alternatively, the self-insurer may submit a statement that includes a list of names and addresses of all medical providers with whom the employer contracts and the effective date of the agreements between the employer and medical provider; and
3. Authorized signature, date, and title of person signing the form.

R20-5-1104. Requirement for Commission Approval to Act as Self-insurer

An employer does not have authority to act as a self-insurer under A.R.S. § 23-961 unless:

1. The employer receives and maintains a Resolution of Authorization from the Commission; and
2. Except as provided in R20-5-1114, the employer has posted security in an amount as required under this Article.

R20-5-1105. Resolution of Authorization

Except as otherwise provided, and subject to annual review and renewal by the Commission under this Article, a Resolution of Authorization to self-insure is valid and continues until such time as the Commission takes action under this Article or the self-insured self-terminates its authorization to self-insure pursuant to R20-5-1137.

R20-5-1106. Time-frames for Processing Initial Applications and Requests for Renewal for Authorization to Self-insure

A. Administrative completeness review.

1. Initial application.

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- a. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
 - b. The Division shall inform the applicant by written notice if the application is incomplete. The Division shall include in its written notice to the applicant, a list of the missing information necessary to comply with this Article.
 - c. The Division shall deem the application withdrawn if an applicant fails to post security as required under this Article or fails to file a completed application within 10 days of being notified by the Division that the application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).
2. Request for renewal.
- a. The Division shall review a request for renewal within 10 days of receipt of the request to determine whether the request contains the information required by A.R.S. § 23-961 and this Article.
 - b. The Division shall inform a self-insurer by written notice if the request for renewal is incomplete. The Division shall include in its written notice to the self-insurer, a list of the missing information necessary to comply with this Article, and the right to request an extension under subsection (D).

B. Substantive review.

1. Initial application. Within 70 days after the Division determines an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue either a Resolution of Authorization granting authority to self-insure, or an order denying authority to self-insure.
2. Request for renewal. Within 60 days after the Division receives all the required information as required under this Article, the Commission shall determine whether a request for renewal for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall renew the self-insurer's authority to self-insure, or issue an order denying or revoking authority to self-insure.

C. Overall review.

1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.
2. Request for renewal. The overall review period shall be 70 days, unless extended under A.R.S. § 41-1072 et seq.

D. If an applicant or self-insurer cannot timely submit to the Division information to complete an initial application or a request for renewal, the applicant or self-insurer may obtain an extension to submit the missing information by filing a written request with the Division. The written request for extension shall be filed no later than 10 days after receipt of the deficiency notice from the Division. The written request for an extension shall state the reasons the applicant or self-insurer is unable to meet the deadline. If an extension will enable the applicant or self-insurer to assemble and submit the missing information, the Division shall grant an extension of not more than 30 days and provide written notice of the extension to the applicant or self-insurer.

R20-5-1107. Requirements for Initial Application under A.R.S. § 23-961

- A. A public entity may file an initial application for authority to self-insure under A.R.S. § 23-961, if the public entity:**
1. Provides an annual payroll in Arizona of at least \$2,000,000; and
 2. Reports total assets of at least \$50,000,000.
- B. An individual employer that is not a public entity may file an initial application for authority to self-insure under A.R.S. § 23-961 if the employer:**
1. Has been engaged in business in Arizona for at least five years before the date of the initial application;
 2. Provides an annual payroll in Arizona of at least \$2,000,000, which payroll may include the combined payrolls of all subsidiary companies carried under the self-insurance authorization;
 3. Meets either of the following thresholds:
 - a. Total reported assets of at least \$50,000,000; or
 - b. Combination of \$10,000,000 in net worth and a cash flow ratio at or above .25.
- C. An initial application for authority to self-insure shall be completed on a form approved by the Commission.**
- D. An initial application for authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division.**
- E. An initial application shall be typewritten.**
- F. An initial application shall be signed and dated by an authorized representative of the employer.**
- G. The authorized representative signing the initial application shall verify, in writing, that the information contained in, and submitted with the application is true and correct.**
- H. The Commission shall deem an initial application for authority to self-insure complete if an applicant, that is not a subsidiary company, provides the following information with the initial application:**
1. A statement from the board of directors or other governing body:
 - a. Authorizing the filing of the application, and
 - b. Designating the person given authority to sign the application on behalf of the applicant;
 2. A statement classifying the applicant's Arizona employees using the workers' compensation classification codes of the approved rating organization used by the Arizona State Compensation Fund;

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3. A copy of the applicable hospital or medical agreement(s) or a detailed statement of the arrangements between or among the employer and the medical provider(s), if medical care will be directed under A.R.S. § 23-1070;
 4. If the applicant is not a public entity, a copy of the applicant's audited financial statements or internally reviewed and signed financial statements for the most current and prior two fiscal years, including the notes to the financial statements;
 5. If the applicant is a public entity, a copy of the applicant's audited financial statement for the most current and prior fiscal year; and
 6. If the applicant is a public entity that qualifies for exemption under R20-5-1114(A), the certified statement required under R20-5-1114(B).
- I.** The Commission shall deem an initial application for authority to self-insure complete if an applicant that is a subsidiary company, provides the following information with an initial application:
1. The information required in subsection (H);
 2. A completed Guaranty to Satisfy Compensation Claims form signed by the subsidiary's parent company;
 3. A certified copy of the resolution of the parent company's board of directors authorizing a designated officer to complete, sign, and file the Guaranty to Satisfy Compensation Claims form; and
 4. A copy of the parent company's audited financial statements for the most current and prior two years, including the notes to the financial statements.

R20-5-1108. Requirements for Self-insurance Renewal

- A.** For a self-insurer that is required to post security under this Article, a request for renewal of authorization to self-insure shall be filed with the Commission 30 days before the self-insurer's anniversary date, when the self-insurer files a Workers' Compensation Liability form. The Commission shall deem the request for renewal complete if the self-insurer provides the following with its request for renewal:
1. A copy of the self-insurer's most recent audited annual financial statements or internally reviewed and signed financial statements or annual report. If a parent company filed a Guaranty to Satisfy Compensation Claims form for a subsidiary applying for self-insurance, then the parent company shall submit a copy of its most recent audited annual financial statement or annual report;
 2. If the self-insured company is a subsidiary, a completed Guaranty to Satisfy Compensation Claims form signed and dated by the parent company of the subsidiary self-insurer if the parent company, or the subsidiary of the self-insurer is different from the last filing approved by the Commission, and a certified copy of the resolution of the parent company's board of directors authorizing a designated officer to complete, sign, and file the Guaranty to Satisfy Compensation Claims form;
 3. Data on a per claim basis to support the summary information reported on the Workers' Compensation Liability form. This information must be provided in the same format as that included in R20-5-1103(B)(2)(a) and (b);
 4. Deposit of security as calculated on the Worker's Compensation Liability form no later than the self-insurer's anniversary date (which deposit is subject to increase upon review by the Commission under R20-5-1128 and R20-5-1129).
 5. A certificate of excess insurance, or a continuing certificate of existing excess insurance if the self-insurer takes a credit for excess insurance under R20-5-1109.
 6. If medical care is directed under A.R.S. § 23-1070, a copy of the current medical or hospital medical agreement(s), or detailed statement of the arrangements, if not previously provided;
 7. A statement of the total number of full-time and part-time Arizona employees;
 8. If the Commission determines that the self-insurer's denial rate exceeds 12% of claims filed, a statement from the self-insurer identifying the reason for each denial of a workers' compensation claim;
 9. If the Commission determines that the self-insurer's experience modification rate is greater than 1.10, a statement from the self-insurer identifying the reasons for the high level of losses;
 10. Name of the third party administrator;
 11. Principal locations of the company in Arizona;
 12. A description of the current nature of business in Arizona and a description of any changes in operations in Arizona in the past year;
 13. List of subsidiary companies located in Arizona; and
 14. Primary and secondary points of contact, with addresses, telephone numbers, facsimile numbers, and e-mail information.
- B.** For a self-insurer that is exempt from the requirement to post security, a request for renewal of authorization to self-insure is deemed filed when the self-insurer files an annual statement described under R20-5-1114(B) no later than the employer's anniversary date. The Commission shall deem the request for renewal complete if the self-insurer provides the following with its request for renewal:
1. Information required under subsections (A)(1), (7), (8), (9), (10) and (14) of this Section; and
 2. A certified statement that contains the information described in R20-5-1114(A) and (B).

R20-5-1109. Security Deposit; Excess Insurance Policy

- A.** Except as provided in R20-5-1114, an applicant that is authorized to self-insure under this Article shall post security in the amount of at least \$100,000 as required in A.R.S. § 23-961, which amount shall not be reduced by a credit for excess insurance.
- B.** Except as provided in R20-5-1114, and subject to the minimum security requirement of A.R.S. § 23-961, a self-insurer that files a request to renew its authority to self-insure under R20-5-1108, shall post security in an amount equal to 125% of its total estimated future liability, or in an amount determined by the Division under R20-5-1128.
- C.** Subject to review by the Commission, total estimated future liability of a self-insurer shall be determined using the Workers' Compensation Liability form.
- D.** Subject to the minimum-security requirement of A.R.S. § 23-961 which minimum shall not be reduced by a credit for excess insurance, the Commission will approve a credit for excess insurance against the amount of security required under this Article only if the following criteria are met:
- 1.** The credit is calculated on the Workers' Compensation Liability form.
 - 2.** The policy of excess insurance contains a 60-day notice of termination.
 - 3.** The excess insurer does not have an affiliate relationship with the self-insurer.
 - 4.** The policy of excess insurance contains a provision that the insolvency of the self-insurer does not relieve the excess insurer of liability under the policy; and
 - 5.** The excess insurer posts a deposit under A.R.S. § 23-961(D).
- E.** If a policy of excess insurance is terminated under subsection (D), the self-insurer shall immediately:
- 1.** Provide written notice of the termination to the Commission, and
 - 2.** Deposit additional security as calculated on the Worker's Compensation Liability form without credit for the excess insurance.

R20-5-1110. Posting of Guaranty Bond; Bond Amount; Effective Date

- A.** A guaranty bond or rider for the guaranty bond filed with the Commission shall bear the same effective date as the effective date of the authorization to self-insure.
- B.** The Commission shall permit a guaranty bond or rider of the guaranty bond in lieu of other security if:
- 1.** The guaranty bond or rider is completed on a form approved for use by the Commission;
 - 2.** The guaranty bond is continuous in form;
 - 3.** The penal sum of the guaranty bond or rider equals the amount required to be posted as security under this Article;
 - 4.** The guaranty bond and rider is issued by a company authorized and licensed to transact the business of surety insurance in Arizona;
 - 5.** A duly authorized agent of the surety executes the guaranty bond or rider;
 - 6.** The surety that issues the bond or rider does not have an affiliate relationship with the applicant or self-insurer; and
 - 7.** The surety that issues the guaranty bond or rider has a rating with A.M. Best of at least A-.
- A guaranty bond shall be continuous in form and will be subject to annual change based on unpaid liabilities as determined from the Workers' Compensation Liability form.
- C.** A company authorized and licensed to transact the business of surety insurance in Arizona shall issue a guaranty bond. A duly authorized agent of the surety shall execute the guaranty bond. A surety that has an affiliate relationship with the self-insurer cannot issue the guaranty bond. A Self-Insurance Workers' Compensation Guaranty Bond form can be obtained from the Division.

R20-5-1111. Posting of Other Bonds or Treasury Notes of the United States in Lieu of Guaranty Bond; Registration; Deposit

- A.** In lieu of providing a guaranty bond as provided in R20-5-1110, a self-insurer may deposit with the Commission for transmittal through the Arizona State Treasurer to the Treasurer's designated bank, bonds or treasury notes of the United States if the obligations are guaranteed as to principal and interest by the United States or by any agency or instrumentality of the United States.
- B.** Bonds or treasury notes of the United States deposited through the Arizona State Treasurer under this Section shall be registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws." This specific language shall also be included in the contract between the self-insured and the custodial bank.
- C.** The bonds or treasury notes of the United States shall be held by the Arizona State Treasurer, as custodian subject to the order of, and in trust for, The Industrial Commission of Arizona, with the power in the Commission to:
- 1.** Collect or order collection of the principal, or market value of the security, whichever is greater, as it becomes due;
 - 2.** Sell or order the sale of these securities or any part of these securities;
 - 3.** Apply or order the application of the proceeds to the payment of any unpaid obligations of the self-insurer, as determined by the Commission, in the event of the default in the payment of its obligations.

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- D. The interest on bonds or treasury notes of the United States deposited under this Section shall be remitted by the bank issuing the bonds or treasury notes to the self-insurer.
- E. The bonds or treasury notes deposited in compliance with this Section shall be in an amount not less than the security deposit amount required under R20-5-1109.

R20-5-1112. Letter of Credit or Local Government Investment Pool Funds (LGIP)

A. Letter of Credit:

- 1. In lieu of posting a guaranty bond as provided in R20-5-1110, a self-insurer may provide to the Commission a letter of credit.
- 2. A letter of credit shall be registered in the same manner as provided in R20-5-1111.
- 3. A letter of credit shall be issued by a Federal or Arizona State chartered bank with an Arizona branch office or correspondent bank in Arizona upon which demand may be made and from which funds will be immediately payable on demand.
- 4. A letter of credit shall include:
 - a. The name(s) and address(es) of the self-insurer, including all Arizona subsidiaries;
 - b. A statement that the letter of credit shall be automatically extended for a period of one year from the present and each future expiration date, unless 30 days before the automatic extension, the issuing bank provides written notice to the Commission's self-insurance administrator, by certified mail return receipt requested, that the bank will not renew the letter of credit for the additional period;
 - c. A statement of the amount available under the letter of credit;
 - d. A statement that the sum(s) available under the letter of credit shall be paid to the Industrial Commission of Arizona upon receipt of a signed statement by an official of the Commission stating the following:
 - i. The self-insurer has failed to pay its workers' compensation obligations; or
 - ii. The self-insurer has filed for bankruptcy; or
 - iii. The self-insurer has failed to renew or substitute acceptable security for workers' compensation liabilities 15 days before the expiration of the letter of credit.

B. Local Government Investment Pool Funds (LGIP):

- 1. In lieu of posting a guaranty bond, or letter of credit, or bonds of the United States, or United States' Treasury Notes, a public agency may post a local government investment pool (LGIP) fund that meets the following requirements:
 - a. The funds must be deposited through the Arizona State Treasurer and registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws." This specific language shall be included in the Assignment between the self-insured and the Industrial Commission of Arizona held by the state of Arizona Treasurer;
 - b. The LGIP funds posted as security in compliance with this Section shall be in an amount not less than the security deposit amount required under R20-5-1109;
 - c. The LGIP funds shall be held by the Arizona State Treasurer, as custodian subject to the order of, and in trust for, The Industrial Commission of Arizona, with the power in the Commission to:
 - i. Collect or order collection of the funds;
 - ii. Apply or order the application of the funds to the payment of any award rendered against the self-insurer, as determined by the Commission, in the event of the default in the payment of its obligations.
 - d. The LGIP must be accompanied by an Assignment for the benefit of the Industrial Commission of Arizona, and an Endorsement-Receipt for Notice of Assignment, signed by the state of Arizona Treasurer and notarized. The Endorsement-Receipt shall contain the following language:

Receipt is hereby acknowledged by the Treasurer of the state of Arizona of written notice of the assignment to the Industrial Commission ("Commission") of the above-identified account. We have noted our records to show the interest of the Commission in said account as shown in and by the above assignment. We have retained a copy of this document. We hereby certify that we have not received any notice of lien, encumbrance, hold, claim, or other obligation against the above-identified account prior to its assignment to the Commission. We further hereby waive any current or future right of set-off against such account. We agree to make payment as required by the Rules and Regulations of the Commission adopted in accordance with applicable laws and the law applicable to this institution.
- 2. The interest on the LGIP funds deposited under this Section shall be remitted by the state of Arizona Treasurer to the self-insurer.

R20-5-1113. Substitution of Securities

No security deposited as a condition precedent to validating a Resolution of Authorization to Self-Insure shall be returned except upon written approval of the Commission. The Commission shall not authorize the return of such security unless the self-insurer has substituted that security with new security in an amount or amounts as required under this Article, and submitted appropriate documentation of such substitution to the Division.

R20-5-1114. Exemption from Requirement to Post Security

- A.** Conditions to qualify for exemption. A public entity applicant and public entity self-insurer are exempt from the requirements under this Article to post or provide securities if the public entity:
1. Maintains a fully funded risk management fund that is sufficient to cover actuarial liabilities for workers' compensation as determined from GASB statement #10; and
 2. Provides, and will continue to provide, funding to the risk management fund sufficient to cover actuarial liabilities for workers' compensation.
- B.** Written request for exemption. A public entity applicant or public entity self-insurer that requests exemption under this Section shall file a certified statement with the Commission before the effective date of initial self-insurance or before the anniversary date, if a renewal. The certified statement shall contain:
1. A statement that the public entity meets the conditions required under subsection (A);
 2. A statement that the governing body of the public entity shall immediately notify the Commission and provide securities required under this Article if the governing body learns that the risk management fund has insufficient funds to cover all workers' compensation liabilities of the public entity self-insurer;
 3. The signatures of a majority of the members of the public entities' governing body; and
 4. If the public entity is an authorized self-insurer, a statement requesting the return of securities previously posted or provided to the Commission, including a specific description of the type and amount of securities previously posted or provided.
- C.** Approval or denial of request for exemption.
1. If the Commission determines that a self-insurer qualifies for exemption under this Section, the Division shall return to the self-insurer securities previously posted or provided to the Commission, within 30 days after receiving written notice under subsection (B).
 2. If the Commission denies a request for exemption under this Section, the Commission shall provide written notice to the entity requesting the exemption within 10 days of the initial written request. The applicant or self-insurer shall have 10 days from the date the Commission's notice is received to request a hearing under A.R.S. § 23-945.
- D.** Failure to comply with conditions of exemption. The Commission shall order a self-insurer that is exempt under subsection (A) to immediately file with the Commission a completed, dated, and signed Workers' Compensation Liability form and post or provide securities as required under this Article if any of the following occurs:
1. The self-insurer fails to file the certified statement required to request renewal of self-insurance authority;
 2. The self-insurer fails to comply with, or takes action directly contrary to, the conditions set forth in subsection (A); or
 3. The Commission determines, based upon receipt of information under subsection (B), or its own review, that the self-insurer's risk management fund has insufficient funds to cover all actuarial liabilities for workers' compensation liabilities of the self-insurer.

R20-5-1115. Rating Plans Available for a Self-insurer

- A.** The following rating plans are available to a self-insurer for the purpose of calculating the taxes required under A.R.S. §§ 23-961 and 23-1065:
1. Fixed premium plan;
 2. Ex-medical plan;
 3. Guaranteed cost plan; or
 4. Retrospective rating plan.
- B.** The provisions of the rating plans apply only to operations and payroll in Arizona. All operations in Arizona shall be combined as a single base for the calculation of any premium modifications to all operations.

R20-5-1116. Fixed Premium Plan; Formula; Eligibility; Information Required to be Submitted with Plan

- A.** The formula to calculate the net taxable premium under a fixed premium plan is as follows: payroll multiplied by the applicable workers' compensation rate minus the premium discount.
- B.** A self-insurer is required to use a fixed premium plan to calculate its net taxable premium if:
1. The self-insurer elects this plan;
 2. The self-insurer's annual net taxable premium does not exceed \$100,000 annually; or
 3. The self-insurer is not eligible for any other plan authorized by the Commission under this Article.
- C.** A self-insurer shall provide the following information in support of the plan submitted under this Section:
1. Self-insurer's Payroll Report,
 2. Self-insurer's Medical Report, and
 3. Self-insurer's Quarterly Tax Payment form.

R20-5-1117. Ex-medical Plan; Formula; Eligibility; Information Required to be Submitted with Plan

- A.** The formula to calculate the net taxable premium under an ex-medical plan is as follows: [(payroll multiplied by the applicable workers' compensation rate) multiplied by (1 minus the ex-medical factor)] minus the premium discount.

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- B.** A self-insurer is eligible to use the ex-medical plan to calculate its net taxable premium if:
1. The self-insurer's program for medical, surgical, or hospital services meets the requirements of A.R.S. § 23-1070; and
 2. The self-insurer's annual net taxable premium exceeds \$100,000.
- C.** A self-insured shall provide the following information in support of the plan submitted under this Section:
1. Self-insurer's Payroll Report,
 2. Self-insurer's Hospital Report,
 3. Self-insurer's Medical Report, and
 4. Self-insurer's Quarterly Tax Payment form.

R20-5-1118. Guaranteed Cost Plan; Formula; Eligibility; Information Required to be Submitted with Plan

- A.** The formula to calculate the net taxable premium under a guaranteed cost plan is as follows: payroll multiplied by the applicable worker's compensation rate multiplied by the experience modification rate minus the premium discount.
- B.** A self-insured is eligible to use a guaranteed cost plan to calculate its net taxable premium if:
1. The self-insurer has an annual net taxable premium exceeding \$100,000; and
 2. The self-insurer calculates its experience modification rate as follows:
 - a. In the first year of self-insurance, the experience modification rate is automatically set at 1.0;
 - b. In the second and third years of self-insurance, the experience modification rate is calculated based upon the loss data accumulated by the self-insurer during its term of self-insurance; and
 - c. In the fourth year of self-insurance and all years thereafter, the experience modification rate is calculated based upon the oldest three years of loss data provided on the Self-insured Injury Report, excluding the most current year.
- C.** A self-insurer shall provide the following information in support of a plan submitted under this Section:
1. Self-insurer's Payroll Report,
 2. Self-insurer's Medical Report,
 3. Self-insurer's Injury Report, and
 4. Self-insurer's Quarterly Tax Payment form.

R20-5-1119. Retrospective Rating Plan; Formula; Eligibility; Information Required to be Submitted with Plan

- A.** The formula to calculate the net taxable premium under a retrospective rating plan is as follows: [(payroll multiplied by the applicable worker's compensation rate multiplied by the experience modification rate multiplied by the basic premium factor) added to (losses for the current year plus adjusted losses from the previous year) multiplied by (the loss conversion factor)] multiplied by the tax multiplier equals the net taxable premium. The net taxable premium is subject to a maximum and minimum premium level.
- B.** A self-insurer is eligible to use the retrospective rating plan if:
1. The self-insurer has an annual net taxable premium exceeding \$100,000; and
 2. The self-insurer calculates its experience modification rate as follows:
 - a. In the first year of self-insurance, the experience modification rate is set at 1.0;
 - b. In the second and third years of self-insurance, the experience modification rate is calculated based upon the loss data accumulated by the self-insurer during its term of self-insurance; and
 - c. In the fourth year of self-insurance and all years thereafter, the experience modification rate is calculated based upon the oldest three years of loss data provided on the Self-insured Injury Report. The most current year's data is used in the actual tax calculation.
- C.** A self-insurer shall provide the following information in support of the plan submitted under this Section:
1. Self-insurer's Payroll Report;
 2. Self-insurer's Medical Report;
 3. Self-insurer's Injury Report; and
 4. Self-insurer's Quarterly Tax Payment form.

R20-5-1120. Completion of Reports in Support of Tax Rating Plan; Calculation and Payment of Taxes Owed by Self-insurer under A.R.S. §§ 23-961 and 23-1065

- A.** A self-insurer shall submit the information required in R20-5-1116, R20-5-1117, R20-5-1118, or R20-5-1119 by February 15 of each year.
- B.** A self-insurer shall pay its annual taxes on or before March 31 based on the net taxable premium calculated for the preceding calendar year. The payment for each tax shall not be less than \$250.00 per year.
- C.** The Division shall calculate quarterly taxes owed under A.R.S. §§ 23-961 and 23-1065 in one of the following ways:
1. 25% of the tax calculated for the previous year; or
 2. A calculation based on actual payroll and losses calculated for each quarter, using the same rating plan to calculate the quarterly payment as used to calculate the taxes required under A.R.S. §§ 23-961 and 23-1065. If this method is selected, the self-insurer shall submit quarterly payroll and loss information by classification code.

- D. Quarterly tax payments are due April 30, July 31, October 31, and January 31 for the periods ending March 31, June 30, September 30, and December 31, respectively.
- E. After receipt of the information required under A.R.S. §§ 23-961, 23-1065, and this Article, the Division shall determine the annual taxes owed by the self-insurer. Upon calculation of the annual taxes, the Division shall determine if the self-insurer has overpaid or underpaid its taxes. If the total of the quarterly payments is less than the actual taxes calculated for the year, then the self-insurer shall pay the amount representing the difference on or before March 31 of the calendar year in which the taxes are due. If the total of the quarterly payments exceeds the amount of the actual taxes calculated for the year, then the Division shall refund the amount as described in A.R.S. § 23-961 or § 23-1065 as applicable.
- F. If the self-insurer fails to pay the annual or quarterly taxes when due, a penalty of the greater of \$25.00 or 5% of the tax or payment due plus interest at the rate of 1% per month from the date the tax or payment was due shall be paid by the self-insurer.

R20-5-1121. Basis for Definitions, Classifications, Rating Procedures, and Plans

For determining the net taxable premium upon which taxes will be calculated under A.R.S. §§ 23-961 and 23-1065 and this Article, the Division shall use as the basis for definitions, classifications, rating procedures, and plans those specified in the rating systems filed by the rating organization used by the State Compensation Fund under A.R.S. Title 20, Chapter 2, Article 4.

R20-5-1122. Report, Book, Record and Data Review by the Commission

- A. All reports, books, records, and data of the self-insurer relating to classifications, payroll, incurred loss reserves, calculation of premiums, completion of Workers' Compensation Liability form, and procedures for development of statistical information for the development of rating information are subject to review by the Commission or its authorized representatives upon request.
- B. The reports, books, records, and data described in subsection (A) shall be readily available for review by the Commission.
- C. If, in the judgment of the Commission, reports, books, records, and data are not clear, valid or credible, the Commission has the right to require correction of procedure and data.

R20-5-1123. Audit and the Cost of Audit

The Commission may, at any time, perform or have performed for its benefit an audit of the payroll, loss payment, and loss reserve records for incurred losses of the self-insurer for the purpose of determining the scope and adequacy of the maintained records. The entire cost of the audit shall be borne by the self-insurer.

R20-5-1124. Requirement to Provide Information to the Commission

A self-insurer shall make available to the Commission, upon request and at an office of the Commission, information described in this Article.

R20-5-1125. Service Companies; Qualifications; Contracts; Transfer of Claims

- A. A self-insurer shall obtain the services of one Service Company to process and pay the self-insurer's workers' compensation claims unless the self-insurer obtains permission to process its own workers' compensation claims from the Claims Division under R20-5-1127, or obtains written authorization from the Manager of the Claims Division to utilize separate service companies. Separate service companies may be authorized for the same self-insurer if the self-insurer has separate divisions or corporate entities in different geographic locations.
- B. A self-insurer shall notify the manager of the Claims Division, of the name, address, and telephone number of its service company at least 30 days before the service company renders services to the self-insurer.
- C. Qualifications of a service company:
 - 1. A service company shall have facilities and equipment to manage, process, and store information pertaining to workers' compensation claims;
 - 2. A service company shall ensure that workers' compensation claims are processed by persons with experience, training by the Claims Division, or knowledge regarding:
 - a. Processing of Arizona workers' compensation claims; and
 - b. The Arizona Workers' Compensation Act.
 - 3. Upon request from the Claims Division, a service company shall provide information and supporting documentation establishing the qualifications required under this subsection.
- D. A service company shall process and pay each workers' compensation claim in compliance with the Arizona Workers' Compensation Act and applicable rules. A contract between a self-insurer and service company shall include this requirement.
- E. Transfer of claims from one service company to another service company, or to the Commission under A.R.S. § 23-966:
 - 1. The transfer of claims from one Service Company to another service company, or to the Commission under A.R.S. § 23-966, shall be handled in a way that does not interfere with or interrupt the processing of a worker's compensation claim.

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2. A service company transferring a worker's compensation claim shall communicate to the new service company, or Commission, if applicable, the historical claims processing activity associated with the worker's compensation claim, and shall provide an original or copy of every document required for continued processing of the worker's compensation claim.
3. A self-insurer shall provide written notice to the Claims Manager of the transfer of its workers' compensation claims from one Service Company to another at least 30 days before the effective date of the transfer.
4. A service company transferring one claim shall transfer all other claims in the same policy to the new service company. Multiple service companies shall not process claims under the same policy.

R20-5-1126. Notice to Commission of Location of Self-insurer's Claims Files

In addition to the requirements found in 20 A.A.C. 5, Article 1 (Workers' Compensation Practice and Procedure), a self-insurer shall keep the Claims Manager of the Commission advised of the location of the self-insurer's open and closed workers' compensation claims files. Except for a claims file that is made available for copying and inspection under R20-5-131(C), if a self-insurer or service company intends to change the location of its claims files, the self-insurer shall provide written notice to the Claims Manager of the change in location at least 30 days before the files are moved.

R20-5-1127. Processing of Workers' Compensation Claims by a Self-insured Employer

The Claims Division shall permit a self-insurer to process its own workers' compensation claims if the self-insurer provides information and supporting documentation establishing the following:

1. The self-insurer has facilities and equipment to manage, process, and store its own information pertaining to the self-insurer's workers' compensation claims;
2. The self-insurer's workers' compensation claims are processed by persons with experience, training by the Claims Division, or knowledge regarding:
 - a. The processing of Arizona workers' compensation claims; and
 - b. The Arizona Workers' Compensation Act.
3. The persons processing the self-insurer's workers' compensation claims have attended and completed training provided by the Claims Division, if not previously attended and completed.

R20-5-1128. Review of Initial Application and Request for Renewal to Self-insure

A. Upon the filing of a completed initial application or request for renewal, the Division shall review all information received to determine and verify whether the information submitted is complete and accurate. The Division shall also review the information provided to determine the following:

1. Whether the applicant or self-insurer meets the requirements of A.R.S. § 23-961;
2. Whether the applicant or self-insurer meets the requirements of this Article. Except for a self-insurer that is exempt under R20-5-1114, this review shall include a determination of whether the security posted by a self-insurer complies with R20-5-1109, or is adequate to provide for the self-insurer's future estimated liability. If applicable, the Division shall advise the applicant or self-insurer of the need for additional securities, which securities shall be posted by the self-insurer before the Commission makes its decision under R20-5-1129.
3. If a self-insurer requests a decrease of 10% or greater in the value or amount of securities provided in the prior year, the Commission shall perform an additional and independent review to determine the adequacy of the security deposit, which review shall consist of:
 - a. Mathematical verification of the accuracy of amounts reported on the Workers' Compensation Liability form;
 - b. Review of claims filed for the three preceding years;
 - c. Review of changes in the payroll of the self-insurer to determine changes in employment levels;
 - d. Review of changes in workers' compensation classification codes to determine changes in operations of the company in Arizona; and
 - e. Review of the financial condition of the self-insurer to determine changes in financial stability, including a review of the total incurred liability expenses for the past three years.
4. Whether the applicant or self-insurer has the ability to process and pay benefits required under the Arizona Workers' Compensation Act.
 - a. For an applicant that is not a public entity, a determination of the ability to process and pay shall include:
 - i. A review of the financial statements to determine the current ratio, quick ratio, cash flow ratio, working capital ratio, debt status ratio, profitability ratio, and the applicant's net profit or loss;
 - ii. A comparison of the applicant's ratios with the ratios of existing self-insurers in the same or a closely related industry;
 - iii. A review of notes to the financial statements;
 - iv. A review of management reports of operations and other published information; and
 - v. A comparison of the applicant's ratio of claims filed to total employees with that of other employers.

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- b. For an applicant that is a public entity, a determination of the ability to process and pay shall include:
 - i. A review of the general fund financial statement to determine the cash ratio and fund equity ratio;
 - ii. A review of excess revenues over expenditures and the ending balances in the general fund and all fund accounts for the past two years;
 - iii. A review of notes to the financial statements;
 - iv. A review of management reports or operations and other published information;
 - v. A comparison of the public entity's ratio of claims filed to total employees with that of other public entities;
 - vi. A comparison of cash and fund equity ratios with that of other public entities; and
 - vii. A review of the risk management fund to determine if it is sufficient to pay all workers' compensation liabilities.
 - c. For a self-insurer requesting renewal that is not a public entity, a determination of the ability to process and pay shall include:
 - i. A review of the information set forth in subsection (A)(4)(a);
 - ii. A review of the claims profile for the past three years, which includes a review of the claims filed, claims denied, and denial rate;
 - iii. A review of the self-insurer's experience modification rate;
 - iv. A comparison of the self-insurer's ratio of claims filed to total employees with that of other self-insurer's; and
 - v. A review of the Parental Guaranty form.
 - d. For a self-insurer requesting renewal that is a public entity, a determination of the ability to process and pay shall include:
 - i. A review of the information set forth in subsection (A)(4)(b);
 - ii. A review of the claims profile for the past three years, which includes a review of the claims filed, claims denied, and denial rate;
 - iii. A review of the self-insured's experience modification rate; and
 - iv. A comparison of, the self-insurer's ratio of claims filed to total employees, with that of other self-insurers.
- B.** The Division shall present the findings and recommendations of its review to the Commission, which may include a recommendation regarding the adequacy of the security based on its independent review and determination as set forth in this Section.
- R20-5-1129. Decision by the Commission on Initial Application or Request for Renewal of Authorization to Self-insure**
- A.** The Commission shall consider the following before granting or denying an initial application or request for renewal to self-insure:
- 1. The information submitted by an applicant or self-insurer.
 - 2. The information and recommendations of the Division, and
 - 3. The requirements of A.R.S. § 23-961 and this Article, including compliance with the requirement for the posting of additional security as recommended by the Division under R20-5-1128.
- B.** The Commission shall deny authority to self-insure if the Commission finds one or more of the following conditions:
- 1. An applicant or self-insurer does not meet the requirements of A.R.S. § 23-961.
 - 2. An applicant or self-insurer does not meet the requirements of this Article, or
 - 3. An applicant or self-insurer is unable to process and pay benefits required under the Arizona Workers' Compensation Act.
- C.** The Commission may table consideration of, or action on, a request for renewal pending receipt of additional security by a self-insurer based on a determination by the Division under R20-5-1128 that the posted security is insufficient.
- D.** A decision of the Commission shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- E.** If the Commission approves an initial application of an applicant that is not exempt under R20-5-1114, then:
- 1. The approval is contingent upon receipt of securities;
 - 2. After the Commission takes action under subsection (D), the Division shall provide written notice to the applicant that the Commission has granted authority to self-insure effective on a date certain and subject to receipt of securities;
 - 3. The applicant shall provide to the Commission the required securities before the effective date of the authority to self-insure; and
 - 4. After an applicant complies with the requirements of subsection (E)(3), the Division shall mail a Resolution of Authorization to Self-insure to the last known business address of the applicant as shown on the records of the Commission.
- F.** If an applicant fails to comply with the requirements of subsection (E)(3), the grant of authority to self-insure shall not become effective and the Commission shall deem the initial application withdrawn.

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- G. If the Commission approves an initial application of an applicant that is exempt under R20-5-1114, the Division shall mail a Resolution of Authorization to Self-insure, to the last known business address of the applicant as shown on the records of the Commission.
- H. If the Commission approves a request for renewal of authority to self-insure, or tables consideration of the request for renewal, the Division shall mail written notice of the Commission's action on the request for renewal to the last known business address of the self-insurer as shown on the records of the Commission.
- I. If the Commission denies authority to self-insure, then the Commission shall issue and mail written findings and an order to the last known business address of the applicant or self-insurer as shown on the records of the Commission no later than 10 days after the Commission denies authority to self-insure.

R20-5-1130. Right to Request a Hearing

- A. An applicant or self-insurer shall have 15 days from the date the Commission's findings and order is received to request a hearing.
- B. A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the applicant or self-insurer or the applicant's or self-insurer's legal representative. The applicant or self-insurer shall file the request for hearing with the Division.
- C. The Commission shall deem its findings and order final if a request for hearing is not received by the Division within the time specified in subsection (A).

R20-5-1131. Hearing Rights and Procedures

- A. Burden of proof.
 - 1. Except as provided in subsection (A)(2), in all proceedings arising out of this Article, the applicant or self-insurer shall have the burden of proof to establish that it has met the requirements of A.R.S. § 23-901 et seq. and this Article.
 - 2. In a revocation hearing, the Commission shall have the burden of proof to establish that the self-insurer has committed the acts described in R20-5-1134.
- B. Roles of Chair and Chief Counsel.
 - 1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
 - 2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section.
- C. Appearance by a party.
 - 1. Except as otherwise provided by law, the parties may appear on their own behalf or through counsel.
 - 2. When an attorney appears or intends to appear before the Commission, the attorney shall notify the Commission, in writing, of the attorney's name, address, and telephone number and the name and address of the person, or entity, on whose behalf the attorney appears.
- D. Filing and service.
 - 1. For purposes of this Section, a document is considered filed when the Commission receives the document. All documents required to be filed in this Section with the Commission shall be served upon the Chief Counsel of the Commission and upon all parties to the proceeding.
 - 2. Except as otherwise provided in A.R.S. § 23-901, et seq. and this Article, service of all documents upon the Commission, applicant or self-insurer shall be by personal service or by mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.
- E. Notice of hearing.
 - 1. The Commission shall give the parties at least 20 days notice of hearing.
 - 2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or self-insurer as shown on the records of the Commission, or upon the applicant's or self-insurer's representative if a notice of appearance has been filed by a representative.
 - 3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061.
- F. Evidence.
 - 1. The civil rules of evidence do not apply to hearings held under this Section.
 - 2. A party may make an opening and closing statement with the permission of the Chair if the Chair determines that the statement will be helpful to a determination of the issues.
 - 3. All witnesses at a hearing shall testify under oath or affirmation.
 - 4. A party may present evidence and conduct cross-examination of witnesses.
 - 5. Documentary evidence may be received into evidence and shall be filed no later than 15 days before the date of the hearing. Upon request or upon direction from the Chair of the Commission, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.

6. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A subpoena shall be requested no later than 10 days before the date of the hearing.
7. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proven by them.
- G. Transcript of Proceedings. Hearings before the Commission shall be stenographically reported or mechanically or electronically recorded. Any party desiring a copy of the transcript or recording shall obtain a copy from the court reporter.

R20-5-1132. Decision Upon Hearing by the Commission

- A. A decision of the Commission to deny authority to self-insure shall be based upon the grounds in R20-5-1129 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- B. A decision of the Commission to revoke authority to self-insure shall be based upon the grounds in R20-5-1134 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- C. After a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing that shall include findings of fact and conclusions of law, separately stated.
- D. A Commission decision is final unless an applicant or self-insurer requests review under R20-5-1133 no later than 15 days after the written decision is mailed to the parties.

R20-5-1133. Request for Review

- A. A party may request review of a Commission decision issued under R20-5-1132 by filing with the Commission a written request for review no later than 15 days after the written decision is mailed to the parties.
- B. A request for review shall be based upon one or more of the following grounds, which have materially affected the rights of a party:
 1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;
 2. Accident or surprise, which could not have been prevented by ordinary prudence;
 3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of the hearing;
 5. Bias or prejudice of the Division or Commission; and
 6. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
- C. A request for review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.
- D. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
- E. The Commission's decision upon review is final unless an applicant or self-insurer seeks judicial review as provided in A.R.S. § 23-946.

R20-5-1134. Revocation of Authorization to Self-insure

- A. The Commission may revoke a Resolution of Authorization to Self-insure for good cause. Good cause includes any of the following:
 1. An inability or failure to process and pay claims under the Arizona Workers' Compensation Act;
 2. Failure of the self-insurer to pay taxes levied by the Commission as required under A.R.S. §§ 23-961 and 23-1065 and this Article;
 3. Failure of the self-insurer to comply with the requirements of this Article, including the failure of the self-insurer to:
 - a. Promptly provide the Commission reports or other information required under this Article concerning the business, operations, employees, wages, injuries, and other subjects under Commission jurisdiction; and
 - b. File the written Letter of Intent required under R20-5-1136.
 4. Failure or deliberate refusal to comply with the applicable requirements of A.R.S. § 23-901 et seq;
 5. Failure to pay or comply with any award or order of the Commission after the award or order becomes final;
 6. Willful misstating of any material fact in a tax report, application, renewal documentation, or other report or statement made to or filed with the Commission;
 7. Failure or deliberate refusal to comply with the requirements of 20 A.A.C. 5, Article 1;
 8. Failure to timely deposit or file securities as specified in this Article; or
 9. Failure to provide information or documentation necessary to affect the timely annual renewal of Authorization to Self-insure.

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- B. Upon receipt of information demonstrating that a self-insurer has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of the investigation, the Division determines that sufficient evidence exists to warrant revocation of a self-insurer's authority to self-insure, then the Division shall present its findings to the Commission.
- C. The Commission shall consider the findings and recommendation of the Division before revoking a self-insurer's authorization to self-insure.
- D. The Commission shall revoke a self-insurer's authority to self-insure if the Commission finds one or more of the grounds set forth in subsection (A). The Commission shall issue written findings and an order revoking the Resolution of Authorization to Self-insure and shall serve a copy of the findings and order upon the self-insurer addressed to the last known address of the self-insurer as shown by the records of the Commission.
- E. A self-insurer shall have 15 days from the date the Commission serves the findings and order described in subsection (D) to request a hearing. The request for hearing shall comply with the requirements of A.R.S. § 23-945.
- F. R20-5-1131, R20-5-1132, and R20-5-1133 govern hearing rights and procedures for revocation hearings and review thereof.

R20-5-1135. Notice of Bankruptcy, Change in Ownership Status, or Change in Business Address

- A. A self-insurer shall notify the Commission within 24 hours of any bankruptcy filing under federal law or insolvency proceeding under any state's laws.
- B. A self-insurer shall notify the Commission within 24 hours of any change in the ownership status or business address of the employer.

R20-5-1136. Plan of Action for Retaining Self-Insurance Authority in the Event of Insolvency or Bankruptcy

- A. If a self-insurer becomes insolvent or files for protection under the United States Bankruptcy Code seeking to reorganize, and desires to remain self-insured, it shall file with the Division a written Letter of Intent regarding its intent to reorganize under the applicable provisions of the United States Bankruptcy Code. The Letter of Intent shall be signed by:
 - 1. The chief executive officer and approved by the board of directors, if the self-insurer is incorporated and said officer and board are still operating, or an attorney representing the corporation in its bankruptcy reorganization case; or
 - 2. An authorized representative of the self-insurer, if the self-insurer is not incorporated, or an attorney representing the entity in its bankruptcy reorganization case.
- B. The self-insurer shall file the Letter of Intent required under this Section within 10 days of the initial bankruptcy filing or insolvency proceeding.
- C. A Plan of Reorganization submitted by the self-insurer to the United States Bankruptcy Court, shall include a provision addressing the self-insurer's obligations to workers' compensation claimants and the Commission. This provision shall state the self-insurer's intentions and financial ability to continue self-insurance. A Plan of Reorganization shall meet all the criteria for qualifying the self-insurer under this Article.
- D. During the interim time period between the initial bankruptcy filing or insolvency proceeding, and the approval of a Plan of Reorganization or Plan of Insolvency/Liquidation, the self-insurer may continue its self-insurance status only upon the demonstration of adequate protection to cover its current workers' compensation claims, or those claims that may come due prior to the approval of the Reorganization or Insolvency Plan. As part of the adequate protection for the Commission, the self-insurer shall post or deposit additional securities in an amount the Commission deems necessary to pay claims currently pending or anticipated prior to the approval of the Plan of Reorganization or Insolvency.
- E. The Commission shall be sent a copy of all proposed Plans of Reorganization or Insolvency/Liquidation and all amendments thereto by the self-insurer, or its legal representative.
- F. Should the Commission determine after a review of the self-insurer's Plan of Reorganization (and amendments thereto) that the Plan is not feasible as it pertains to the self-insurer's workers' compensation claims, the Commission may file an Objection to the Plan of Reorganization in the appropriate bankruptcy court and take other actions as permitted under the United States Bankruptcy Code in furtherance of its governmental duties and powers.

R20-5-1137. Notice of Termination of Authorization to Self-insure by Self-insurer

- A. A self-insurer shall file with the Division a completed and signed Notice of Self-Termination of Authority to Self-insure by Self-insurer form, if the self-insurer decides to terminate its self-insurance. The Notice of Self-Termination of self-insurance shall be filed with the Division 30 days before the effective date of termination of self-insurance.
- B. Prior to the effective date of the termination of self-insurance, the self-insurer shall file a certificate with the Claims Division designating an insurance carrier, or other satisfactory proof of compliance with the requirements of A.R.S. § 23-961, to cover claims of the self-insurer that:
 - 1. Are pending at that time the self-insurer terminates its self-insurance; and
 - 2. Occur after the effective date of the termination of self-insurance.